

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,**

**Plaintiffs,**

**v.**

**STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION; JOHN HOUSTON;  
OTHA DILLIHAY; HENRY R. ERVIN;  
and MARILYN BENSON,**

**Defendants.**

**CASE NO- 2:07-cv-650**

**PLAINTIFFS' MEMORANDUM BRIEF IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW the Plaintiffs, Joan Owens and Lynn Hubbard, and in opposition to the Defendants' Motion for Summary Judgment, submit this memorandum brief of evidentiary facts and legal authorities. As set forth herein, there is substantial evidence that the Defendants, individually and collectively, have violated the Plaintiffs' rights as secured by state and federal law, which raises material issues of fact. Therefore, as a matter of law the Defendants' Motion for Summary Judgment should be denied and the Plaintiffs' claims allowed to proceed to trial.

**I. INTRODUCTION**

In their Motion for Summary Judgment Defendants fully address the standard of review applicable to a movant pursuant to Rule 56 of the Federal Rules of Civil Procedure. The standard of review will not be repeated here other than to point out that, as Defendants' recognize, the burden of proof is on the Defendants to establish that there are no material issues of fact and that Defendants

are entitled to summary judgment as a matter of law. Furthermore, as also noted by Defendants, the Court must draw all reasonable inferences from the evidence in favor of the Plaintiffs - Joan Owens and Lynn Hubbard.

As discussed herein, there are substantial issues of material fact on all claims pled by the Plaintiffs in their Complaint. Moreover, the arguments and contentions made by the Defendants in their Motion for Summary Judgment are, in light of all evidence of record, without merit and pretextual. Thus, Defendants are not entitled to a summary judgment and their Motion should be denied.

## **II. THE PARTIES' CONTENTIONS**

The Plaintiffs claim that their employment rights as secured by Title VII, 42 U.S.C. § 1981, the Fourteenth Amendment (through 42 U.S.C. § 1983), and state law have been violated. Specifically, Plaintiffs assert that there was an organized effort among the Defendants to place a black in the Assistant Manager position and deny them an opportunity to compete for the position because of their race. Plaintiffs further contend that the Defendants have acted willfully, maliciously, arbitrarily, capriciously and with deliberate indifference to their constitutional and civil rights. The rules and regulations of the Alabama Department of Mental Health and Mental Retardation ("the Department") prohibit discrimination and favoritism in the Department's personnel and employment practices. Defendants have deliberately violated such rules and regulations. Finally, Defendants have engaged in tortuous acts and omissions for which state law provides a remedy. Thus, Plaintiffs seek compensatory and punitive damages, and equitable relief, under both federal and state law.



Defendants contend that they have not violated the Plaintiffs' federal civil rights and that there was a legitimate need to deny Plaintiffs the right to compete for the Assistant Personnel Manager position. Defendants contend that a college degree was needed for the job, which Plaintiffs do not have, that the interview process was fairly conducted and that Plaintiffs therefore cannot claim illegal discrimination. However, as discussed herein, there is substantial evidence that the Defendants have intentionally discriminated against Plaintiffs on the basis of race, have acted arbitrarily and capriciously, and that the Defendants' contentions are pretextual.

### **III. GENERAL AND BRIEF DESCRIPTION OF THE UNDISPUTED FACTS UNDERLYING THE PLAINTIFFS' CLAIMS**

Plaintiffs are white females employed by the Department as human resources specialists in the Central Personnel Office. (Exhibit 106, Deposition of Joan Owens p. 6, lines 8,9; Exhibit 107 Deposition of Lynn Hubbard, p. 16, lines 22, 23; Exhibit 111 Deposition of John Houston, p. 27, lines 13 through 21; Exhibit 108 Deposition of Henry Ervin, p. 168, line 17 through p. 169, line 3). The Department utilizes an employment system whereby the Department establishes and maintains its own exempt<sup>1</sup> job classification system. (Exhibit 108, Deposition of Henry Ervin, p. 86, lines 13 through 18). The Plaintiffs are employed in the Department's exempt system under the title Personnel Specialist III or PS III. (Exhibit 107, Deposition of Lynn Hubbard, p. 10, lines 1 through 3).

Both Plaintiffs have substantial experience in human resources and personnel management. (See Exhibit 112, Affidavit of Joan Owens, at ¶¶ 2 through 9; Exhibit 113, Affidavit of Lynn

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<sup>1</sup> By law the Department is permitted to opt out of the State Merit System managed by the Alabama State Personnel Department, and establish its own job classification system. (Exhibit 108, Deposition of Henry Ervin, p. 86, lines 13 through 18). Jobs developed by the Department through its exempt status are referred to as "exempt" jobs or positions. (Exhibit 108, Deposition of Henry Ervin, p. 86, line 23 through p. 87, line 3).

Hubbard, at ¶¶ 2 through 9). Indeed, Plaintiff Owens has almost 30 years personnel management experience, serving as Human Resources Director for Elmore Community Hospital and as Human Resources Director for both Tarwater Rehabilitation Center in Wetumpka and Greil Hospital in Montgomery. (Affidavit of Joan Owens, ¶¶ 2, 3 and 9) While serving as PS IIIs for the Department both Plaintiffs have at all times received “exceeds standard” ratings on their employment evaluations. (Plaintiffs’ Exhibits 58 and 59).

Besides Plaintiffs there was one other PS III employed in the Central Personnel Office, a black female, Defendant Marilyn Benson. (Exhibit 109, Deposition of Marilyn Benson, p. 22, lines 16 through 22). A full description of the general duties and qualifications of a PS III are contained in the position’s *Specification* sheet, attached hereto as Plaintiffs’ Exhibits 46 and 62.

Plaintiffs and Defendant Benson all reported to Defendant Henry Ervin whose job title is Human Resources Director but whose legal title is “Personnel Manager IV.” (Exhibit 108, Deposition of Henry Ervin, p. 83, lines 16 through 22). Defendant Ervin is a black male.

Defendant Ervin’s direct supervisor was Defendant Dillihay, also a black male. (Exhibit 110, Deposition of Otha Dillihay, p. 131, lines 3 through 9). Defendant Dillihay worked as Associate Commissioner for Administration until he was terminated by Defendant Houston because he was “not trusted in the community.” (Exhibit 111, Deposition of John Houston, p. 212, lines 4 through 6). According to Houston: “A lot of people did not trust him in the community, didn’t like him.” (Exhibit 111, Deposition of John Houston at p. 212, lines 4 through 6).

Defendants Dillihay and Ervin worked together to create the job of Departmental Assistant Personnel Manager (which for simplicity will be referred to hereafter as “Assistant Personnel Manager” or “Assistant Manager”). (Exhibit 110, Deposition of Otha Dillihay, p. 217, line 21

through p. 218, line 1; Exhibit108, Deposition of Henry Ervin, p. 137, lines 18 through 22; p. 138, lines 2 through 6, and 12 through 19). This position would be an intermediate management position between the Human Resources Director and Personnel Specialists, with a significant five-range pay increase. (Exhibit 110, Deposition of Otha Dillihay, p. 135, lines 7 through 9; Exhibit109, Deposition of Marilyn Benson, p. 160, line 111; cf Plaintiffs Exhibit 46 with 62). The job would serve as a stepping stone to the Human Resources Director position upon Ervin's departure. (Exhibit 107, Deposition of Lynn Hubbard, p. 109, line 22 to p. 110, line 1; p. 111, line 17 through p. 112, line 2; Exhibit 110, Deposition of Otha Dillihay, p. 303, lines 12 through 19).

Although Ervin could have utilized someone outside the Central Personnel Office, he selected and directed Defendant Benson to research and draft the qualifications and duties (or *Specification*) for the Assistant Manager position. (Exhibit109, Deposition of Marilyn Benson, p. 130, lines 4 through 23; p. 131, lines 1 through 15; Exhibit108, Deposition of Henry Ervin, p. 36, lines 1 through 4). In fact, Ervin could just as well have used Owens and Hubbard for assistance in drafting the *Specification*. (Exhibit108, Deposition of Henry Ervin, p. 34, line 17 through p. 36, line 4). However, neither Defendants Houston, Dillihay, Ervin or Benson disclosed to Plaintiffs that the position was being created or that Defendant Benson was preparing the job *Specification*. (Exhibit 107, Deposition of Lynn Hubbard, p. 34, lines 12 through 7; p. 87, lines 2 through 6, 17 through 18; p. 198, line 19 through p. 199, line 6). Indeed, Ervin instructed a Central Personnel Office staff member aware of the job's creation to "keep it quiet." (Affidavit of Becky Burrell, Exhibit 4(a) to Defendants' Motion for Summary Judgment).

Defendant Benson's educational background and knowledge, skills and abilities precisely match those contained in the *Specification* for the Assistant Personnel Manager position adopted by

Ervin, Dillihay and Houston. (Exhibit109, Deposition of Marilyn Benson, p. 163, lines 5 through 23; p. 164, lines 1 through 23; p. 166, lines 12 through 23). In addition, unlike all other similar positions in the Central Personnel Office, including Defendant Ervin's own position as Human Resources Director, the *Specification* for the Assistant Manager position glaringly omitted the substitution provision, or right to substitute educational experience for minimum educational requirements (and vice versa). (Exhibit 107, Deposition of Lynn Hubbard, p. 104, lines 19 through 22).

The *Specification* for the Assistant Manager position requires a bachelors degree in human resources management, business or public administration, or related field. (Plaintiffs' Exhibits 46 and 62). Benson has a bachelor's degree in Hospital Administration, a related field. (Plaintiffs' Exhibit 67). Neither Plaintiff has a bachelor's degree although they both have extensive work experience as personnel managers. (Affidavit of Joan Owens, ¶¶ 2 through 9; Affidavit of Lynn Hubbard, ¶¶ 2 through 9). Furthermore, although not contained in the *Specification*, the job announcement for the Assistant Personnel Manager position gave a preference for a candidate with a master's degree in one of the previously referenced fields. (Plaintiffs' Exhibit 52). Benson has a master's degree in Public Administration. (Exhibit109, Deposition of Marilyn Benson, p. 164, lines 2 through 8).

When the Assistant Manager position vacancy was announced, Defendant Ervin encouraged Defendant Benson to apply for the job. (Exhibit109, Deposition of Marilyn Benson, p. 159, lines 4 through 6). Benson applied. (Exhibit109, Deposition of Marilyn Benson, p. 100, lines 1 through 7; p. 159, lines 21 through 23). Although both qualified white and black candidates applied, only black candidates were interviewed. (Exhibit108, Deposition of Henry Ervin, p. 191, lines 12 through

20). During the application/interview process Benson received a “perfect score.” (Exhibit 109, Deposition of Marilyn Benson, p. 166, lines 2 through 20). Benson was awarded the job and promoted to Assistant Personnel Manager, at a much higher pay grade, where she works today. (Exhibit 109, Deposition of Marilyn Benson, p. 160, lines 8 through 18).

Plaintiffs wished to apply and compete for the position of Assistant Personnel Manager, and could have competed with Benson and other applicants based on their extensive experience and their ability to perform the job’s functions. (Exhibit 107, Deposition of Lynn Hubbard, p. 105, line 21 through p. 206, line 8). However, because the job’s *Specification* did not allow for substitution of experience, and stated that a bachelor’s degree was a minimum requirement to be considered for the job, Plaintiffs could not meet the qualifications and did not apply. (Exhibit 106, Deposition of Joan Owens, p. 184, lines 9 through 17).

Nonetheless, Plaintiff Owens approached Defendant Ervin, asked that the substitution clause be included with the job because she wanted to apply, and complained that she was being discriminated against. (Exhibit 106, Deposition of Joan Owens, p. 148, line 21 through p. 149, line 1). Defendant Ervin cursed at her. (Exhibit 106, Deposition of Joan Owens, p. 149, lines 1 through 3). Plaintiff Hubbard twice approached Defendant Houston and complained that the Assistant Manager position was being created solely for Defendant Benson and that she, Hubbard, was being discriminated against. (Exhibit 107, Deposition of Lynn Hubbard, p. 141 line 6 through p. 142, line 1; p. 144, line 22 through p. 145, line. 4; p. 208, line 19 through p. 209, line 2). Defendant Houston refused to change the *Specification* and did nothing to investigate Hubbard’s claim. (Deposition of John Houston, p. 126, lines 22, 23; p. 127 lines 16, 17; p. 128, lines 18 through 22; p. 129, lines 16 through 20; p. 130, lines 4 through 15; p. 130, line 18 through p. 132, line 2). Plaintiffs filed a

grievance with the Equal Employment Opportunity Commission (“EEOC”). (Exhibit 106, Deposition of Joan Owens, p. 154, lines 8 through 12; Exhibit 107, Deposition of Lynn Hubbard, p. 124, lines 18 through 21). After conducting an investigation which included receiving two lengthy position statements from the Department, the EEOC issued a probable cause finding in Plaintiffs’ favor. (Plaintiffs’ Exhibit 37). This lawsuit followed.

#### **IV. IN-DEPTH DISCUSSION OF THE EVIDENCE**

##### ***a. Identity of the Parties***

###### **Plaintiff Joan Owens**

Plaintiff Joan Owens is a resident of Elmore County, Alabama, who has worked in the area of personnel management and human resources for almost thirty (30) years. (Affidavit of Joan Owens, ¶ 2, attached hereto as Plaintiffs’ Exhibit 112). Owens was employed for twenty-one (21) years at Elmore Community Hospital, where she ultimately served as Personnel Director from 1978 until 1990, was a member of the Hospital’s Executive Team, and served as Director of Physician Recruitment from 1985 until 1990. (Affidavit of Joan Owens, ¶ 2). As Personnel Director, Owens was responsible for all hospital personnel and human resources matters in hiring. (Affidavit of Joan Owens, ¶ 2). Owens conducted disciplinary actions and terminations, developed and maintained personnel records, and served as the advisor to executive management in matters of personnel policy and procedure as well as labor relations. (Affidavit of Joan Owens, ¶ 2).

As Director of Physician Recruitment, Owens was responsible for physician recruitment for the hospital and ensured physician staffing for the hospital’s emergency room. (Affidavit of Joan Owens, ¶ 3). Owens corresponded with prospective physicians, arranged interviews and meetings between physicians and hospital management, negotiated physician salaries, established physician

office procedures, and even helped physicians find new homes in the area. (Affidavit of Joan Owens, ¶ 3). There are currently three doctors practicing in Elmore County that Owens originally recruited, i.e., Dr. Bipin Kumar, an internists; Dr. Spencer Coleman, a family practitioner; and Dr. Bruce Kent, also a family practitioner. (Affidavit of Joan Owens, ¶ 3).

In addition to being Personnel Director, Owens also directly supervised four hospital departments with over nineteen (19) employees. (Affidavit of Joan Owens, ¶ 4). The hospital departments supervised by Owens were pharmacy, dietary, housekeeping and respiratory therapy. As a member of the hospital's Executive Team, Owens was on-call for the hospital twenty-four hours a day, seven days a week. (Affidavit of Joan Owens, ¶ 4).

Owens also assisted in ensuring the hospital payroll obligations were met and prepared monthly, quarterly, and yearly payroll taxes, i.e., FICA, FIT, and state taxes. (Affidavit of Joan Owens, ¶ 5). Owens also assisted in the payment of accounts receivables and worked with auditors on the hospital's budget, and at one point was signatory authority for every check written by Elmore Community Hospital. (Affidavit of Joan Owens, ¶ 5).

Elmore Community Hospital is JCAHO certified. JCAHO is "The Joint Commission of Accreditation of Healthcare Organizations and Affiliates." (Affidavit of Joan Owens, ¶ 6). JCAHO is the highest accreditation a health facility can hold and even accredits facilities operated by the Alabama Department of Mental Health and Mental Retardation. (Affidavit of Joan Owens, ¶ 6). During her employment with Elmore Community Hospital, Owens was responsible for maintaining criteria regarding employee job evaluations according to JCAHO standards and ensuring that all applicable hospital employees had and maintained current licenses. (Affidavit of Joan Owens, ¶ 6). Owens played a key role for Elmore Community Hospital regarding JCAHO inspections and review,

and trained various hospital departments relevant to JCAHO certification. (Affidavit of Joan Owens, ¶ 6).

In 1989, Elmore Community Hospital, like many small community hospitals, was facing an insecure financial future. In order to obtain better job security and benefits, Owens voluntarily left Elmore Community Hospital and went to work for the State of Alabama, in the Department of Mental Health and Mental Retardation, as an Assistant Personnel Manager at J. S. Tarwater Development Center. (Affidavit of Joan Owens, ¶ 7). After working there for just two months, Owens was asked to serve as the Interim Acting Personnel Manager. (Affidavit of Joan Owens, ¶ 7).

Owens worked at Tarwater for eight years, from 1990 until 1999. (Affidavit of Joan Owens, ¶ 8). Her job duties consisted of many of the same duties she had while working at Elmore Community Hospital, including maintaining personnel records, discipline, administering mental health tests, representing the facility in unemployment compensation hearings, staff development, giving instruction on personnel policies and procedures, and ensuring payroll obligations were met. In addition, Owens administered merit and exempt system hirings. (Affidavit of Joan Owens, ¶ 8). Owens also participated in the Title IX Survey in order for Tarwater to be Medicare and Medicaid certified. (Affidavit of Joan Owens, ¶ 8). Owens also recruited health care professionals for Tarwater, including family practice physicians, RNs, and LPNs. (Affidavit of Joan Owens, ¶ 8).

In 1999, Owens applied for and was hired as the Personnel Director at Greil Hospital, where she was the only personnel officer for the 113-employee facility. (Affidavit of Joan Owens, ¶ 9). After only two months working at that facility, the hospital was inspected and certified by JCAHO. While serving as Personnel Director Owens was a member of the hospital's management team, and performed all the payroll functions. (Affidavit of Joan Owens, ¶ 9). At all times during her



employment with the Department Owens has consistently received “exceeds standards” ratings on her evaluations. (Affidavit of Joan Owens, ¶ 9). Currently, Greil employs not only a personnel director but also has an assistant personnel director and a clerical person for the same size staff that existed when Owens was the only personnel officer at the facility. (Affidavit of Joan Owens, ¶ 9).

**Plaintiff Lynn Hubbard**

Hubbard has extensive supervisory experience which she initially gained while employed by Kindercare Learning Centers, Corporate Office, where she supervised three shifts of computer staff. Hubbard’s duties at Kindercare included employee training and writing both technical and procedural manuals for computer operations staff. (Affidavit of Karen Hubbard, ¶ 2, attached hereto as Exhibit 113).

Hubbard has over 13 years of progressively responsible experience in human resources management. (Affidavit of Karen Hubbard, ¶ 3). Immediately upon her promotion from Administrative Support Assistant III to PS III on July 1, 2000, Owens and Hubbard jointly shared the responsibility of managing the human resources management programs for Tarwater Developmental Center in Wetumpka and Greil Hospital. (Affidavit of Karen Hubbard, ¶ 3). While working at Greil, Hubbard was responsible for the facility’s comprehensive human resources program. (Affidavit of Karen Hubbard, ¶ 3). Hubbard’s scope of responsibility encompassed recruitment and selection; personnel policy review; update and implementation; ensuring compliance with personnel rules, laws, and regulations; conducting new employee training in personnel policies; overseeing the employee performance appraisal system; and effecting all personnel actions including, hiring, promotions, demotions, transfers, disciplinary actions, and dismissals. (Affidavit of Karen Hubbard, ¶ 3). Hubbard also served as a member of the hospital’s management team. (Affidavit of

Karen Hubbard, ¶ 3). Hubbard managed all of these functions while continuing to perform recruitment and selection and various other responsible administrative functions at the Central Personnel Office. (Affidavit of Karen Hubbard, ¶ 3).

During Hubbard's first year in her dual capacity, Greil opened a new Crisis Unit. (Affidavit of Karen Hubbard, ¶ 4). The Associate Commissioner for Mental Illness at that time, Kim Ingram, made a special note of Hubbard's efforts in having staff on board in time for the opening of the Crisis Unit, stating: "This absolutely would not have happened without your dedication to detail and willingness to work to get the job done." Ingram's memorandum is included in Hubbard's personnel file. (Affidavit of Karen Hubbard, ¶ 4).

In December of 2001 Ervin informed Hubbard that she "continued to do outstanding work" at Central Office and mentioned her "excellent work" toward assisting the Department in proposing and implementing a salary range increase for mental health workers. (Affidavit of Karen Hubbard, ¶ 5).

During her work at Greil, Hubbard assisted in ensuring the facility was in compliance with JACHO Staffing Standards and established a secondary record system to demonstrate systematic competency evaluation procedures. (Affidavit of Karen Hubbard, ¶ 6). At the completion of the JACHO survey, Hubbard was asked on several occasions to participate in the Department's mock survey process designed to assist its facilities in preparing for JACHO surveys. (Affidavit of Karen Hubbard, ¶ 6).

While fulfilling the responsibilities of the Personnel Manager for Greil and PS for the Central Personnel Office, Hubbard continued to receive "exceeds standards" ratings on her employee

appraisals. (Affidavit of Karen Hubbard, ¶ 7). After over three years of serving in a dual capacity, Hubbard returned to the Central Office full time. (Affidavit of Karen Hubbard, ¶ 7).

While working in the Central Office, Hubbard was singled out by Defendant Ervin for any human resources project that involved gathering and analyzing data and information to propose solutions or make recommendations. (Affidavit of Karen Hubbard, ¶ 8). Defendant Ervin appointed her as a member of a work group comprised of Department Personnel Managers, Facility Directors, and Psychiatrists to address the Department's critical need in filling vacant Psychiatrist positions. (Affidavit of Karen Hubbard, ¶ 8). From that effort, Hubbard developed a short-term psychiatrist recruitment plan on Defendant Ervin's behalf. (Affidavit of Karen Hubbard, ¶ 8).

Hubbard attended Auburn University Montgomery for over two years where she worked towards a major in English and a minor in Sociology. (Affidavit of Karen Hubbard, ¶ 10).

### **Marilyn Benson**

Defendant Marilyn Benson is a black female who resides in Alexander City, Alabama, and is an employee of the Department. (Exhibit109, Deposition of Marilyn Benson, p. 249, lines 6 through 109; p. 6, lines 6 through 8). Benson has worked with the Department since 1984, beginning as a research assistant. (Exhibit109, Deposition of Marilyn Benson, p. 83, lines 1 through 8). Benson currently holds the position of Departmental Assistant Personnel Manager in the Central Personnel Office. (Exhibit109, Deposition of Marilyn Benson, p. 94, lines 15 through 22). As discussed herein, Benson's current position is the basis of the Plaintiffs' Complaint. Benson has a bachelor's degree in Health Services Administration from Auburn University, which she obtained in 1991, and a master's degree in Public Administration from Auburn University Montgomery, which she obtained in 1997. (Plaintiffs' Exhibit 67). The only employer Benson has had outside of the

Department was Neuropsychiatry Associates, where Benson worked for one year in 1983-1984 as Office Manager. (Plaintiffs' Exhibit 67; Exhibit109, Deposition of Marilyn Benson, p. 78, lines 2 through 5; p. 79, lines 11, 12).

**Defendant Henry Ervin**

Defendant Henry Ervin is a black male and resident of Tuscaloosa, Alabama. (Exhibit108, Deposition of Henry Ervin, p. 115, lines 2,3). Until July 1, 2008, Defendant Ervin was the Human Resources Director in the Central Personnel Office at the Department. (Exhibit108, Deposition of Henry Ervin, p. 105, lines 1 through 10). Ervin has a bachelor's degree in Education with a major in History, which he received from Alabama State University in 1968. (Exhibit108, Deposition of Henry Ervin, p. 61, lines 13 through 16). Ervin has no other degree. (Exhibit108, Deposition of Henry Ervin, p. 62, lines 11 through 17). At all times material to the Complaint, Ervin served as Director of Human Resources at the Department's Central Personnel Office. (Exhibit108, Deposition of Henry Ervin, p. 83, lines 10 through 15). Ervin's legal title is "Personnel Manager IV." (Exhibit108, Deposition of Henry Ervin, p. 83, lines 16 to 22). Before his promotion to Human Resources Director in 1998, Ervin served as Director of Human Resources Management at Thomasville Mental Health and Rehabilitation Center, under the legal title "Personnel Manager I." (Exhibit108, Deposition of Henry Ervin, p. 104, lines 1 through 19). Before then, Ervin operated his own business known as Ervin's House of Ribs. (Exhibit108, Deposition of Henry Ervin, p. 211, lines 10, 11).

**Defendant Otha Dillihay**

Defendant Otha Dillihay is a black male and resident of Columbia, South Carolina. Dillihay previously worked at the Department in the appointed position of Associate Commissioner. (Exhibit

110, Deposition of Otha Dillihay, p. 102, lines 19, 20). Dillihay was appointed by former Commissioner Kathy Sawyer and was terminated by the present Commissioner, John Houston. (Exhibit 110, Deposition of Otha Dillihay, p. 103, lines 18 through 22; p. 126, lines 4 through 9; p. 127, lines 6 through 8; Exhibit 111, Deposition of John Houston, p. 212, lines 15, 16). Dillihay is currently the Chief Human Resources Officer with the Richland One School District in Columbia, South Carolina. (Exhibit 110, Deposition of Otha Dillihay p. 76, lines 22, 23; p. 83, lines 5 through 7). Dillihay has also worked as a pay-for-hire speaker. (Exhibit 110, Deposition of Otha Dillihay, p. 37, line 23 through p. 38, line 9). According to his resume, Dillihay has held nine jobs during the past twenty years, never holding a single job longer than five years. (Plaintiffs' Exhibit 2).

#### **Defendant John Houston**

Defendant John Houston is the Commissioner of the Department. He was appointed to his present position by Governor Bob Riley in August 2008. (Exhibit 111, Deposition of John Houston, p. 6, lines 14 through 18; p. 7 lines 15 through 17). From February 1, 2005 to August 2005, Houston served as the Interim Acting Commissioner. (Exhibit 111, Deposition of John Houston, p. 6, lines 19 through 22). Houston has worked with the Department since 1986, either as Executive Assistant to the Associate Commissioner or Executive Assistant to the Commissioner. (Plaintiffs' Exhibit 80; Exhibit 111, Deposition of John Houston, p. 14, lines 3 through 9).

#### **Defendant Alabama Department of Mental Health & Mental Retardation**

Defendant, the Alabama Department of Mental Health and Mental Retardation, is the state agency responsible for serving citizens with mental illness, mental retardation and substance abuse addiction through a network of state mental illness and mental retardation facilities and community-based services, both on an inpatient and outpatient basis. (Plaintiffs' Exhibit 119). The Department

employs approximately three thousand employees in a variety of positions ranging from housekeeping to medical care, to administration. (Exhibit 111, Deposition of John Houston, p. 190, lines 6, 7). The greatest number of Department employees, i.e., at least one-third of all Department employees, work in Tuscaloosa County, Alabama, at multiple Department facilities, (i.e., Bryce Hospital, the Taylor Hardin Secure Medical Facility, William D. Partlowe Developmental Center, Mary Starke Geriatric Psychiatric Center and Alice M. Kidd Nursing Facility). (Exhibit 108, Deposition of Henry Ervin, p. 73, lines 8 through 14; p. 75, lines 7 through 15).

The Central Personnel Office at the Department is located at the Department's executive headquarters at 100 N. Union Street (RSA Union), in Montgomery. (Exhibit 109, Deposition of Marilyn Benson, p. 90, lines 3 through 14). The Central Personnel Office consists of seven employees, including Defendants Ervin and Benson, and Plaintiffs Hubbard and Owens. (Exhibit 108, Deposition of Henry Ervin, p. 83, lines 7 through 9; p. 168, line 17 through p. 169, line 3). Most Departmental facilities, such as Bryce and Partlowe, have their own personnel offices supervised by a Personnel Manager who reports directly to the facility's director. (Exhibit 108, Deposition of Henry Ervin, p. 77, lines 2 through 16). The Central Personnel Office does not manage such offices. Instead, the Central Personnel Office serves as a support center and conduit for the personnel offices at the facilities. (Exhibit 108, Deposition of Henry Ervin, p. 100, line 18 through p. 101, line 15).

***(b) State Law and the Department's Administrative Rules and Regulations Prohibit Discrimination, Favoritism and Preferential Treatment in Employment Practices and Matters***

Pursuant to the Alabama Administrative Code § 580-6-36-.01, the Department has statutory authority to establish non-merit positions, as well as personnel policies and salary schedules for its

own employees. Pursuant to § 580-6-36-.02:

The Department shall publish policies, procedures and regulations pertaining to the administration of employment in the exempt services. These publications shall comply with state law . . . . The Department of Mental Health and Mental Retardation shall establish and promulgate guidelines governing the selection of exempt employees. The recruitment, selection and advancement of exempt employees will be based upon job-related factors.

(ALA. ADMIN. CODE § 670-x-1-.02).

Section 580-6-35-.01 of the Alabama Administrative Code provides that the classification and pay plans for all positions in the classified services within the Department shall be maintained in accordance with the State Merit System Act. The Department has adopted by reference the standards of state personnel in reference to the State Merit System Act. (ALA. ADMIN. CODE § 580-6-35-.01). The State Merit System Act was enacted to ensure that all citizens of demonstrated capacity, ability and training have an equal opportunity to compete for service within the State. (ALA. ADMIN. CODE § 670-x-1-.02).

Under the State Merit System Act, every position in the State is allocated to one of the classes established by a classification plan. (ALA. ADMIN. CODE § 670-x-7-.04). Positions that are similar with respect to difficulty, responsibility, and character of work, which require generally the same kind and amount of training and experience for proper performance, and merit approximately equal pay are all allocated to the same class. Id.

Both federal and state law, as well as the rules, regulations and policies of the Department prohibit employment discrimination or favoritism in the creation and awarding of jobs. Section 580-6-36-.05 of the Alabama Administrative Code provides that the Department will employ individuals to exempt positions *only through an open and competitive process*. (Exhibit 111, Deposition of John Houston, p. 81, lines 15 through 22). Furthermore, applicable State personnel rules prohibit

discrimination against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action, because of race, sex, national origin, age, handicap, or any other non-merit factor. (ALA. ADMIN. CODE § 670-x-4-.01; Plaintiffs' Exhibit 81).

According to the Department's website, applications are accepted and appointments made on an equal opportunity basis without regard to gender, race, age, religion, disability or color. (Plaintiff's Exhibit 83). As conceded by the Defendants in this case, the Department's policies, rules and regulations prohibit the Department and its officers and employees from pre-selecting employees for non-appointed exempt positions, and from creating or designing a position around a specific employee, or otherwise giving a specific employee a competitive advantage for an exempt or merit position. (See Exhibit 110, Deposition of Otha Dillihay, p. 173, lines 3 through 5; Exhibit 111, Deposition of John Houston, p. 68, lines 2 through 23; also Plaintiffs' Exhibits 15, 16 and 105).

It is the Commissioner's responsibility to act in a prudent way in carrying-out the authority bestowed by State law upon the Department and the Commissioner. (ALA. ADMIN. CODE § 580-1-1-.05(1). The Commissioner's duties include, but are not limited to, supervising, coordinating and establishing standards for all operations and activities of the Department related to mental health and mental retardation services. (ALA. ADMIN. CODE § 580-1-1-.06(1) and (3)).

***(c) The Department Utilizes a Job Classification  
Known as Personnel Specialist III***

In 2005, there were three PS III employed in the Central Personnel Office, i.e., Defendant Marilyn Benson and Plaintiffs Joan Owens and Lynn Hubbard. (Exhibit 107, Deposition of Lynn Hubbard, p. 18, line 23; p. 29, lines 4 through 7; p. 55, line 22 through p. 56, line 4). The position of PS III is "specialized administrative work assisting in the direction of human resource management activities for a mental health facility or at the Central Personnel Office." (Plaintiffs'



Exhibit 62).

According to the position's *Specification*: "Employees in this class assist in the direction of a human resource management program of extensive size, scope and complexity." (Plaintiffs' Exhibit 62). The position of PS III is within the Personnel Specialist class, which consists of positions for Personnel Specialist I, Personnel Specialist II, and Personnel Specialist III. (Exhibit 108, Deposition of Henry Ervin, p. 31, lines 16 through 19; Exhibit 113, Affidavit of Lynn Hubbard, ¶ 3). The position of Personnel Specialist III has a pay range of 75 and, as Personnel Specialist III, Hubbard, Benson and Owens all had the same basic job functions. (Plaintiffs' Exhibit 62; Exhibit 109, Deposition of Marilyn Benson, p. 23, lines 8 through 15). The *Specification* for PS III, which provides a true and correct description of Owens, Hubbard and Benson's general duties and responsibilities, is attached hereto as Exhibit 62.

The qualification for the position of PS III require a bachelor's degree in Human Resources Management, Business Administration, Public Administration, or a related field; extensive (72 months or more) professional personnel management experience in a state agency or equivalent professional management experience; and also experience (24 months or more) in a supervisory capacity. (Plaintiffs' Exhibit 62). Nonetheless, the position of PS III allows substitution of directly related work experience for any and all of the education qualifications, or vice-versa. (Plaintiffs' Exhibit 62).

Neither Joan Owens or Lynn Hubbard have a bachelor's degree in Human Resources Management, Business Administration, Public Administration, or a related field. However, they both have extensive directly related work experience in the area of human resources management in order to meet the minimum work experience requirements and substitute for the minimum

education requirements. (Affidavit of Joan Owens, ¶¶ 2 through 9; Affidavit of Lynn Hubbard, ¶¶ 2 through 9).

***(d) The Personnel Specialist IIIs Report to Henry Ervin, whose Position is Human Resources Director/Personnel Manager IV.***

Defendant Benson and Plaintiffs Owens and Hubbard are supervised by Defendant Ervin whose working title is Human Resources Director but whose legal title is Personnel Manager IV. (Exhibit108, Deposition of Henry Ervin, p. 83, lines 16 through 22). The position of Personnel Manager IV is part of the Personnel Manager classification, which consists of positions for Personnel Manager I, Personnel Manager II, Personnel Manager III and Personnel Manager IV. (Exhibit108, Deposition of Henry Ervin, p. 85, lines 2 through 11; see also Plaintiffs' Exhibits 101, 102, 103 and 104).

As set forth in the *Specification* attached hereto as Plaintiffs' Exhibit 104, the minimum qualifications for the position of Personnel Manager IV are higher than the minimum qualifications for PS III or the new position Assistant Personnel Manager. In addition to a bachelor's degree in Personnel Management, Business Administration, Public Administration or related field, a Personnel Manager IV must also have master's degree in the same or related fields, plus progressively extensive experience (72 months) in professional personnel management. (Plaintiffs' Exhibit 104, p. 2). However, like the position of PS III, the *Specification* for Personnel Manager IV allows for substitution of experience for education. (Plaintiffs' Exhibit 104, p. 2).

Defendant Ervin admits that he was able to obtain his position as Personnel Manager IV using substitution. (Exhibit108, Deposition of Henry Ervin, p. 167, lines 1 through 21). Ervin does not have a master's degree. (Exhibit108, Deposition of Henry Ervin, p. 167, lines 5 through 8). In fact, Ervin does not have a bachelor's degree in Personnel Management, Business Administration,

Public Administration, or a related field. (Exhibit108, Deposition of Henry Ervin, p. 167, lines 9 through 16). To the contrary, Ervin's bachelor's degree is in Education with a major in History. (Exhibit108, Deposition of Henry Ervin, p. 61, lines 17 through 22). Thus, like Plaintiffs, Ervin obtained and holds his position as Human Resources Director/Personnel Manager IV based on experience alone. (Exhibit108, Deposition of Henry Ervin, p. 167, line 17 through p. 168, line 6).

***(e) Ervin and Dillihay Decide to Create the Position  
of "Departmental Assistant Personnel Manager"***

In their Memorandum Brief Defendants state that Dillihay decided to create the position of Assistant Personnel Manager because the Central Personnel Office did not have "proper people trained in authority in times of emergencies or when Ervin was not present," and Ervin was eligible for retirement. (Defendants' Memorandum Brief at 13-15). However, Ervin testified that it was his idea to create the position. (Exhibit108, Deposition of Henry Ervin, p. 180, lines 1 through 21).

It is undisputed that Defendants Dillihay and Ervin worked together to create the position and to obtain Defendant Commissioner Houston's approval for the position. (Exhibit 110, Deposition of Otha Dillihay, p. 217, line 21 through p. 218, line 1; Exhibit108, Deposition of Henry Ervin, p. 193, line 2 through p. 194, line 3). In June 2005, almost six months after the position had been created and its *Specification* developed, Defendant Ervin wrote a Memorandum to Defendant Houston requesting approval to create the position. (Plaintiffs' Exhibit 50). The reasons given by Defendant Ervin in his Memorandum for the creation of the position - - most of which are much different from those given by Dillihay in his deposition - - are as follows: (1) certain Department facilities have been closed or consolidated and the Central Personnel Office must devote more energy and developing "meaningful HR management programs;" (2) a Wage and Class Study will soon be conducted in 2005; (3) the office would be investigating the possibility of utilizing grant

funding for the Study; and (4) thirty percent (30%) of the Department's workforce would be eligible for retirement within two to three years. (Plaintiffs' Exhibit 50). Thus, Defendant Ervin requested permission to create the position in order to assist the Wage and Class Study and provide direct supervision over clerical and paraprofessional staff. (Plaintiffs' Exhibit 50).

What was not mentioned in the Memorandum was Ervin's intent to relocate to Tuscaloosa. Defendant Ervin remarried and his new wife lived in Tuscaloosa. (Exhibit 108, Deposition of Henry Ervin, p. 116, lines 12 through 17). Ervin had repeatedly told the Plaintiffs and others, before the Assistant Personnel Manager position was created, that a job with the Department was going to be created for him in Tuscaloosa and he would be leaving. (Exhibit 107, Deposition of Lynn Hubbard, p. 179, lines 5 through 23). This prophesy has now come true with Ervin accepting the position of Manager of Employee Relations, effective July 1, 2008. (Exhibit 108, Deposition of Henry Ervin, p. 272, lines 1 through 12). In fact, although Ervin's new position was to be filled through open competition, Ervin testified that Commissioner Houston had him prepare the job *Specification* for the position. (Exhibit 108, Deposition of Henry Ervin, p. 275, line 19 through p. 276, line 10; p. 278, lines 1 through 15).

Dillihay testified that the Assistant Personnel Manager was created to create a career development path, i.e., a stepping stone for Ervin's successor. (Exhibit 110, Deposition of Otha Dillihay, p. 141, lines 1 through 15). Plaintiffs contend that the Assistant Personnel Manager position was created to ensure that Ervin's eventual successor would be black. (Exhibit 106, Deposition of Joan Owens, p. 153, lines 11 through 13).

***(f) Ervin Directs Benson to Research and Draft the Specification for the Assistant Personnel Manager Position.***

Without providing any direction, or explaining the purpose, duties or responsibilities of the

job, Ervin instructed Benson to research and prepare the *Specification* for the Assistant Personnel Manager position. (Exhibit109, Deposition of Marilyn Benson, p. 134 lines 18 through 23; p. 137, lines 3 through 7). The *Specification* defines the job; gives examples of work performed; lists required knowledge, skills and abilities; and sets forth minimum qualifications for applicants, all as are contained in the *Specification* for the position marked as Plaintiffs' Exhibit 19 or Plaintiffs' Exhibit 46<sup>2</sup>. (Exhibit109, Deposition of Marilyn Benson, p. 14, lines 9 through 18). (When the position opening is ultimately announced, the *Specification* is used to prepare the announcement and to guide the interview process.) (Exhibit109, Deposition of Marilyn Benson, p. 150, lines 3 through 9).

In conducting her research, Benson looked at the old Form 40<sup>3</sup> for the Assistant Personnel Manager position when Ervin held the job years ago (this Form 40 has never been produced and allegedly cannot be found). (Exhibit109, Deposition of Marilyn Benson, p. 172, lines 4 through 17). Benson also contacted the Mental Health Department in the State of Georgia, which competes with Alabama for employees and whose structure is most similar to the Alabama Department of Mental Health and Mental Retardation. (Exhibit109, Deposition of Marilyn Benson, p. 174, lines 5 through 23). Benson also visited the employment websites for the States of Georgia, Tennessee and Florida. (Exhibit109, Deposition of Marilyn Benson, p. 174, lines 9 through 19).

In her deposition, Benson admitted that similar positions she researched in Georgia and

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<sup>2</sup> Otha Dillihay was the first Defendant deposed and his deposition was not returned before the other Defendants were deposed. Therefore, some exhibits used in Dillihay's deposition are also used in subsequent depositions but with a different exhibit number.

<sup>3</sup> A Form 40 is a administrative form used by state agencies for all employees, and lists an employee's primary duties and responsibilities. (Exhibit108, Deposition of Henry Ervin, p. 121, lines 7 through 12). A Form 40 is required to be prepared for every employee. (Exhibit108, Deposition of Henry Ervin, p. 121, line 7 through p. 123, line 6).

Tennessee all allowed substitution of experience for educational requirements. (Exhibit109, Deposition of Marilyn Benson, p. 178, line 10 through p. 179, line 3). A copy of the job descriptions Benson reviewed from Georgia and Tennessee are attached hereto as Plaintiffs' Exhibits 70, 71 and 72. Specifically, the Human Resources Director position in Georgia requires a "bachelor's degree in human resources management or a related field *or equivalent work experience.*" (Plaintiffs' Exhibit 70) (emphasis added). Similarly, the Human Resources Manager positions in Tennessee require a bachelor's degree but "*qualifying full-time professional human resources experience may be substituted for the required education.*" (Plaintiffs' Exhibits 72 and 73) (emphasis added).

***(g) Ervin Directed Benson to Prepare All Documents to Create  
and Announce the Assistant Personnel Manager***

Defendant Benson testified that Defendant Ervin instructed her to prepare all of the documents relevant to the creation of the Assistant Personnel Manager position and the advertisement of such position. (Exhibit109, Deposition of Marilyn Benson, p. 136, line 5 through 10; p. 141, lines 14 through 23; p. 142, lines 15 through 20; page 145, lines 3 through 15). Specifically, Benson prepared:

1. The *Specification* setting forth the definition of the job; examples of work performed; required knowledge, skills and abilities; and minimum qualifications. (Plaintiffs' Exhibits 19 and 46; Exhibit109, Deposition of Marilyn Benson, p. 141, lines 9 through 18).
2. The Memorandum directed to the Alabama State Personnel Department requesting that a job code be provided for the position. (Plaintiffs' Exhibit 49; Exhibit109, Deposition of Marilyn Benson, p. 127, lines 20 through 22).
3. A Memorandum from Henry Ervin to Commissioner Houston requesting

authorization to create the position. (Plaintiffs' Exhibit 50; Exhibit109, Deposition of Marilyn Benson, p. 142, lines 1 through 17).

4. The original Announcement of Intent to Fill the position of Departmental Assistant Personnel Manager, setting forth the qualifications for the job; work to be performed; required knowledge, skills and ability; method of selection; *preferred education and experience*; and how to apply. (Plaintiffs' Exhibit 47; Exhibit109, Exhibit109, Deposition of Marilyn Benson, p. 151, line 22 through p. 152, line 7)<sup>4</sup>.
5. A second notice of Intent to Fill the position. (Plaintiffs' Exhibit 78).

***(h) The Defendants Disregard the Proper Process for Establishing the Assistant Personnel Manager Position.***

As noted above, Benson prepared a request from Ervin to Jackie Graham, the Deputy Director of State Personnel, requesting a job code for the position. (Exhibit 49; Exhibit109, Deposition of Marilyn Benson, p. 127, lines 20 through 22). Although the Assistant Personnel Management position is exempt and, thus, not regulated by the State Personnel Department, State Personnel must still accept the position into its record system. (Exhibit109, Deposition of Marilyn Benson, p. 36, line 10 through p. 37, line 7).

Benson testified that the Memorandum would have been prepared and submitted to State Personnel on February 3, 2005. (Exhibit109, Deposition of Marilyn Benson, p. 132, lines 4 through 13). Benson testified that she attached the *Specification* (Plaintiffs' Exhibit 19) to the Memorandum for State Personnel's records. (Exhibit109, Deposition of Marilyn Benson, p. 149, lines 3 through

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<sup>4</sup> Benson testified that she prepared all of these documents at the direction of Henry Ervin. (Exhibit109, Deposition of Marilyn Benson, p. 136, lines 5 through 10; p. 141, lines 14 through 23; p. 142, lines 15 through 20; p. 145, lines 3 through 15; Exhibit108, Deposition of Henry Ervin, p. 20, lines 2 through 22; p. 34, lines 17 through 23; p. 35, lines 6 through 12; p. 140, lines 1 through 5).

8). Thus, the final job *Specification* utilized by Defendants in this case was completed no later than February 3, 2005, and made part of the State Personnel system that same day.

However, Ervin did not request permission from Houston to create the position until four months later, on June 14, 2005. (Plaintiffs' Exhibit 50; Exhibit 108, Deposition of Henry Ervin, p. 239, lines 16 through 23). Indeed, Ervin's request to the Commissioner was made four days after the position had already been approved by the State Finance Director for inclusion in the state budget. (Plaintiffs' Exhibit 51).

Moreover, well after the position and its *Specification* had been approved by Defendant Houston, the position was submitted to the Job Evaluation Committee ("JEC") for its consideration. (Plaintiffs' Exhibit 73). The JEC sits in an advisory capacity and is responsible for reviewing and approving the creation of all new positions and the minimum qualifications for such positions. (Exhibit 109, Deposition of Marilyn Benson, p. 195, lines 8 through 33). After the JEC has an opportunity to consider, and accept or reject a proposed position and its qualifications, the Commissioner then reviews the matter and, with the benefit of the JEC's review, makes a final determination. (Affidavit of Judith Johnston, ¶ 10, attached hereto as Exhibit 114).

Even the Defendants acknowledge in their Memorandum Brief that presenting the position to the JEC was pointless. See Defendants' Memorandum Brief in Support of Motion for Summary Judgment at p. 15 ("At the meeting, the JEC approved the position of Departmental Assistant Personnel Manager for recommendation to the Commissioner, an act that was actually unnecessary since the Commissioner had already approved the position."). Moreover, the *Specification* for the position were never presented, and thus never approved, by the JEC. (Affidavit of Judith Johnston



at ¶ 11).<sup>5</sup>

***(i) Ervin Admits that Other Office Personnel, Including the Plaintiffs, Could have Researched and Prepared the Assistant Personnel Manager Specification and Paperwork, But He Instructed Others to “Keep It Confidential.”***

Defendant Ervin admits that he could have used other people beside Benson to research and prepare the *Specification*. (Exhibit108, Deposition of Henry Ervin, p. 142, lines 17 through 21). In fact, Ervin could have used Plaintiffs Owens and Hubbard. (Exhibit108, Deposition of Henry Ervin, p. 142, line 23). When Ervin had to obtain a job assignment number for the position from Becky Burell, who was working in Central Personnel at the time, Ervin told her to “keep this confidential” and “don’t say anything about this.” (Exhibit 4(a) to Defendant’s Memorandum Brief in Support of Motion for Summary Judgment). Benson also never told anyone she was preparing the *Specification*. (Exhibit109, Deposition of Marilyn Benson, p. 183, line 18 through p. 184, line 19). According to Owens and Hubbard, the “secrecy” surrounding the position was highly unusual since it was common practice to discuss what everyone was working on during monthly staff meetings . (Exhibit 107, Deposition of Lynn Hubbard, p. 29, line 22 through p. 30, line 8).

***(j) Ervin, Dillihay & Houston Admit That the Work of the Assistant Personnel Manager Could Have Been Done Without Creating the Position.***

Defendant Houston admits that the “need” set forth in his Memorandum Request from Ervin to create the position could have been accomplished instead by hiring more Central Office Personnel. (Exhibit 111, Deposition of John Houston, p. 146, line 19 through p. 147, line 6; p. 149, line 14

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<sup>5</sup> Marilyn Benson claims that the *Specification* for the position was presented to and approved by the JEC. (Exhibit109, Deposition of Marilyn Benson, p. 199, line 23 through p. 200, line 5). However, the Minutes from the July 22, 2005 JEC meeting do not support her testimony. (Plaintiffs’ Exhibits 27 and 73). Marilyn Benson was the Secretary for the JEC and actually prepared the July 22, 2005 Minutes. (Exhibit109, Deposition of Marilyn Benson, p. 194, lines 4 through 6; p. 197, lines 6 through 8).

through p. 150, line 3). For example, other personnel could have been hired to assist with the Wage and Class Survey. Indeed, the Plaintiffs have assisted with the Wage and Class Survey. (Exhibit109, Deposition of Marilyn Benson, p. 214, line 23 through p. 215, line 20). In fact, after Benson's promotion she continued to perform many of her old duties, and her former position was downgraded and a new personnel specialist was hired. (Exhibit109, Deposition of Marilyn Benson, p. 97, lines 10 through 21; p. 104, line 14 through p. 105, line 12)

In addition, it was unnecessary to create to position to supervise clerical and paraprofessional staff. (Exhibit 107, Deposition of Lynn Hubbard, p. 48, lines 8 through 14; Exhibit 106, Deposition of Joan Owens, p. 209, line 8; Exhibit109, Deposition of Marilyn Benson, p. 113, lines 10 through 13). Both Benson and Plaintiffs were already supervising clerical and paraprofessional staff. Indeed, although not within the duties of a PS III, beginning in 2002, three years prior to the creation of the Assistant Personnel Manager position, Benson was already receiving annual evaluations for "serving as Acting Director of Human Resources during the absence of the Director." (Plaintiffs' Exhibit 57; Exhibit109, Deposition of Marilyn Benson, p. 191, lines 3 through 14). Thus, contrary to Ervin's Memorandum, an Assistant Personnel Manager was not needed to accomplish the objectives set forth in his Memorandum.

***(k) The Specification for the Assistant Personnel Management  
Position Precisely Matches Benson's Education, Work  
Experience, and Knowledge Skills and Abilities.***

The minimum education and work experience qualifications for the Assistant Personnel Manager position are:

**Qualifications:**

Graduation from a four-year college or university with a Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public

Administration, or related field. Extensive experience (72 months or more) in professional personnel management, plus experience (24 months or more) in a supervisory capacity.

(Plaintiffs' Exhibit 46 at p. 2)

Benson is the only person in the Central Personnel Office who meets all these qualifications for the position of Assistant Personnel Manager. (Exhibit 109, Deposition of Marilyn Benson, p. 163, line 5 through p. 162, line 1).

Benson also possesses all knowledge, skills and abilities (KSAs) required for the position, which are as follows:

**Knowledge, Skills, and Abilities:**

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Knowledge of State personnel rules and policies governing public agencies/
- Knowledge of principles and practices of public personnel administration, regarding applicable rules, regulations, policies
- Thorough knowledge of interviewing techniques
- Ability to advise and make recommendations regarding employment selection procedures
- Ability to conduct and coordinate meetings and chair committees
- Ability to research grants and funding sources
- Ability to interpret state and federal rules and regulations
- Ability to communicate and convey ideas in an affective manner both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.

- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the general public

(Plaintiffs' Exhibit 46, p. 2).

In fact, the primary KSA is "[t]horough knowledge of Department of Mental Health and Mental Retardation rules and regulation." (Plaintiffs' Exhibit 19 or 46, p. 2). This KSA automatically limits a qualifying candidate to someone already on staff. Mike Mathis was asked to receive and graded the applications for the position. (Defendants' Memorandum Brief at 19). In carrying-out his work Mathis wrote to Ervin, giving the following observation: "If the applicant is going to be able to function anytime soon as your Assistant they must have a strong knowledge [sic.] background of DMH/MR and State Personnel practices. (Plaintiffs' Exhibit 116).

On September 15, 2005, the Assistant Personnel Manager position was announced for the interview process to begin. (Plaintiffs' Exhibits 47 and 78). The Announcement (i.e., "Announcement of Intent to Fill a Non-Merit Position Equal Opportunity Employer") contained three additional *preferences* on top of the minimal qualifications. The preferences were: (1) a master's degree in one of the specified fields; (2) work experience in the government/public sector; and (3) work experience in a health care setting. (Plaintiffs' Exhibits 47 and 78).

As with all the other qualifications, Benson likewise fully satisfied each additional preference. (Exhibit109, Deposition of Marilyn Benson, p. 164, lines 2 through 8).

Indeed, when Benson's application was graded by Mathis during the application process, Benson received a perfect score of "10", which even she recognized was "higher than normal[]." (Plaintiffs' Exhibit 69; Exhibit109, Deposition of Marilyn Benson, p. 165, line 21 through p. 166, line 21). When asked her thoughts about receiving a perfect score regarding the qualifications and

preferences which she had prepared, Benson “assumed” it was a mere coincidence:

Q. And do you understand that Plaintiffs’ Exhibit 69 is an evaluation form of your application for the position of Departmental Assistant Personnel Manager?

A. I see that it is.

...

Q. Is it true that based upon Plaintiffs’ Exhibit 69 that you received a perfect score when it came to the qualifications for the position.

A. I see that there’s a score of 10. I don’t know about perfect, but there’s a score of 10 on this evaluation.

Q. Very high score, right?

...

A. And your question?

Q. Would you agree with me that that’s a very high score?

...

A. Well, it’s higher than normally. The highest points you can get, I think, would be a score of 10.

Q. Which would mean that this would be a perfect score; right?

A. If you want to say it that way, I guess so.

Q. And is it your belief that it’s just coincidental that you worked so much on the drafting of specifications and announcement for this position and you happen to have a perfect score for such qualifications?

A. Is it my understanding?

Q. Do you believe it’s just coincidental?

A. I assume so.

(Exhibit 109, Deposition of Marilyn Benson, p. 165, line 14 through p. 167, l. 6).

In fact, of the three candidates interviewed for the position (all of which were black), the next highest scoring candidate, Commie Carter, who also worked in the Department and possessed both a bachelor's and master's degree, only received a score of "5", or one-half the score Benson received.<sup>6</sup> (Plaintiffs' Exhibit 115).

***(l) Plaintiffs Complain of Discrimination and Petition Defendants to Include the Substitution Provision so they can Apply - - Defendants Refuse.***

In May 2005, Hubbard received a telephone call from a person in State Personnel requesting more information about the position control number for the Assistant Personnel Manager position. (Exhibit 107, Deposition of Lynn Hubbard, p. 31, lines 14 through 19). This was the first time Hubbard had ever heard of the position. (Exhibit 107, Deposition of Lynn Hubbard, p. 31, lines 14 through 19). Hubbard immediately suspected the position was being created for Benson, especially since the substitution provision had recently been modified from one-for-one (one year's direct work experience for one year of required education) to two-for-one. (Exhibit 107, Deposition of Lynn Hubbard, p. 34, lines 12 through 17; p. 143, lines 2 through 11).

Fearing that Benson would be given the job without her ever having an opportunity to compete, Hubbard went directly to Defendant Houston. (Exhibit 107, Deposition of Lynn Hubbard, p. 29, line 15 through p. 30, line 11). Hubbard explained her reasons for approaching Defendant Houston:

- A. . . . [T]he reason that I did it was, I was about to go on a two-week vacation. I only knew that there was a position. I didn't know how far along in the development it was. I didn't know anything about the qualifications.

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<sup>6</sup> Carter had previously worked in the Central Personnel Office until she received a management job elsewhere in the Central Office. (Affidavit of Judith Johnston, ¶ 22). In 1998 Benson, Carter and Ervin had all competed for the Director of Human Resources position held by Ervin. (Exhibit 108, Deposition of Henry Ervin, p. 105, lines 18 through 21).

But the fact that it wasn't talked about in staff meetings the way normally positions are, the fact that Joan and I weren't privy to discussions concerning the needs of the office or qualifications for a position as we usually do, that I felt that they were about to appoint Marilyn this position without following procedures, and I wanted to be sure that I had an opportunity to apply for it was my main concern.

In other words, I didn't want it to get announced and closed and filled while I was on vacation.

(Exhibit 107, Deposition of Lynn Hubbard, p. 29, line 15 through p. 30, line 11).

When Hubbard met with Defendant Houston she told him that she was afraid a new position was being created just for Benson and was afraid her rights were being violated. (Exhibit 107, Deposition of Lynn Hubbard, p. 141, lines 6 through 13). Hubbard testified:

- A. Well, I know that when I met with the Commissioner prior to this position being announced, I met with him and discussed that I thought such a position was coming out, that I was concerned that they were writing this position specifically for Ms. Benson, and that they were bypassing my rights and that it was being done on a racial basis.

(Exhibit 107, Lynn Hubbard, p. 141, lines 6 through 13).

According to Hubbard, Defendant Houston promised her he would not sign off on a change with the substitution clause, and that he would have someone look into her concerns. (Exhibit 107, Deposition of Lynn Hubbard, p. 143, lines 4 through 6). Hubbard left Houston's office feeling relieved. Hubbard testified:

- A. He did say that while I was on vacation, he would not sign off on that and that he would look into it or - - I can't remember exactly. But I left feeling as though I didn't have to worry about going on vacation and have a job announced and not get an opportunity to apply for it. At that point, I didn't know if the two-for-one made a difference or not because I didn't know what the specs were.

(Exhibit 107, Deposition of Lynn Hubbard, p. 143, lines 4 through 12).

When Hubbard returned from vacation she learned that Houston had in fact signed off on the

changes in the substitution clause. Hubbard again went to Houston and asked him why. Hubbard testified:

- A. . . . So I went up there and asked him about it and how he had arrived at that being a good thing to do or not to do. And he said that he had not realized he signed it, that it was in a big stack of stuff and that he had signed off on it, not realizing what he was signing.

(Exhibit 107, Deposition of Lynn Hubbard, p. 144, line 22 through p. 145, line 4).

According to Hubbard, she was “stunned” and “shocked” by the Defendant Houston’s excuse:

- A. Well, I was really kind of stunned mostly by what he said, that he had accidentally signed something. And I said, you have just impacted the lives of so many people by that. I meant, I was really shocked. And he said, I’m sorry. That’s all I can tell you.

(Exhibit 107, Deposition of Lynn Hubbard, p. 147, lines 4 through 9).

It is undisputed that by the time Hubbard discussed the position with Defendant Houston in May 2005, the position and its *Specification* were firmly established and had already been on file at the State Personnel Office since February 2005. (Plaintiffs’ Exhibit 50; Exhibit 109, Deposition of Marilyn Benson, p. 131, lines 16 through 20). This explains why Ervin’s formal written request to establish the position followed and was approved in June 2005, and the position was pointlessly presented to the JEC in July 2005. Indeed, according to Houston he likely would have approved the *Specification* as it was irregardless of the JEC’s recommendation. (Exhibit 111, Deposition of John Houston, p. 154, lines 18 through 23).

Hubbard had earlier told Owens that she had learned that the Assistant Personnel Manager position was being created. (Exhibit 107, Deposition of Lynn Hubbard, p. 34, line 20 through p. 35, line 1). However, neither Plaintiff had seen or knew anything about the *Specification* or that the



*Specification* omitted the substitution clause. (Exhibit 107, Deposition of Lynn Hubbard, p. 142, lines 12 through 15).

In September 2005 the Announcement for the position was published. (Plaintiffs' Exhibit 78). Upon seeing the announcement, Owens announced in front of June Lynn, Otha Dillihay's executive assistant, that she intended to apply for the position. (Exhibit 106, Deposition of Joan Owens, p. 131, lines 1 through 10). Lynn immediately advised Owens that she could not apply because the position did not allow substitution. (Exhibit 106, Deposition of Joan Owens, p. 131, lines 11 through 15). Owens then asked Lynn, in the presence of the Department's Attorney, Courtney Tarver, to have the substitution clause inserted so she could apply. (Exhibit 106, Deposition of Joan Owens, p. 132, line 1). Lynn responded that she could not because Dillihay and Ervin had written the specs and she could not change them. (Exhibit 106, Deposition of Joan Owens, p. 132, lines 6 through 8). Owens then approached Defendant Ervin that same day and asked Ervin to change the position to allow for substitution. (Exhibit 106, Deposition of Joan Owens, p. 148, line 1). Ervin replied:

Joan, I'm tired of your damn shit. . . as much as I have done for you and Hubbard and as uneducated as you are I would have expected this from Hubbard, but not you.

(Exhibit 106, Deposition of Joan Owens, p. 149, lines 2, 3 and 12 through 15).

Defendant Ervin testified that he cannot recall the exact words he spoke to Owens but he does not deny cursing at her. (Exhibit 108, Deposition of Henry Ervin, p. 211, line 3 through p. 212, line 4).

The position's vacancy was re-announced in October 2005. (Plaintiffs' Exhibit 42). With both announcements, the substitution provision was omitted. (Plaintiffs' Exhibits 68 and 78).

***(m) Ervin Encourages Benson to Apply for Assistant Personnel Manager; Benson Applies and Receives the Job, a Promotion with Substantially Higher Pay.***

Benson testified that Ervin encouraged her to apply for the Assistant Personnel Manager position. (Exhibit109, Deposition of Marilyn Benson, p. 159, lines 4 through 6). Benson applied and received the job. (Plaintiffs' Exhibit 67). As discussed above, Benson's application received a perfect score of "10" based on her meeting all the qualifications and preferences that she had researched and prepared. (Plaintiffs' Exhibit 69; Exhibit109, Deposition of Marilyn Benson, p. 165, line 21 through p. 166, line 21).

As mentioned later herein, Defendants contend that the application process was conducted by Mike Mathis, who was not involved in the position's creation, and therefor they cannot be liable for discrimination. Plaintiffs do not assert a claim against Mathis. To the contrary, Plaintiffs contend that Benson was preselected for the position, that the position was designed around Benson to give her a competitive and exclusive advantage over any other candidates, and that the substitution provision was omitted to prevent the Plaintiffs from applying and competing on account of their race, all in violation of the Department's rules and regulations, and in violation of Federal and State law.

## **ARGUMENT**

**I. THE DEFENDANTS' DISPOSITIVE MOTION MUST BE DENIED - THERE IS SUBSTANTIAL EVIDENCE THAT DEFENDANTS HAVE DISCRIMINATED AGAINST PLAINTIFFS IN THE TERMS AND CONDITIONS OF THEIR EMPLOYMENT IN VIOLATION OF FEDERAL LAW AND THE UNITED STATES CONSTITUTION.**

In their Motion for Summary Judgment the Defendants argue that the Plaintiffs have failed to meet their burden of proof of showing illegal discrimination and, therefore, they are entitled to summary judgment as matter of law. However, the Defendants are wrong! There is substantial,

compelling and, indeed, overwhelming evidence of intentional employment discrimination against Plaintiffs in violation of Title VII, U.S. C. § 1981 and § 1983. In fact, there is “direct evidence” of intentional discrimination. Consequently, there is no burden-shifting approach usually applied in employment discrimination cases as set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Moreover, irrespective of the direct evidence, there is more than sufficient evidence to fully satisfy McDonnell Douglas. Thus, the Defendants’ Motion for Summary Judgment should be denied as a matter of law.

**A. Plaintiffs Have Stated A Claim As a Matter of Law for Racial Discrimination.**

The Plaintiffs have stated a claim for racial discrimination. Their Complaint specifically alleges that the Defendants intentionally removed or omitted the substitution clause from the Assistant Personnel Manager *Specification* in order to prohibit and preclude Plaintiffs from applying for such position and competing with Benson for the job. Specifically, the Departments’ rules and regulations require that the Department hire through a fair, open, competitive process. (ALA. ADMIN. CODE § 580-6-36-.05). Yet the Defendants, using Benson herself, created the position solely around Benson’s qualifications, thus giving her an exclusive advantage for the job. Then, to ensure that Benson would be the only qualified employee under the *Specification* for the job, Defendants intentionally omitted the substitution clause so as to prevent Plaintiffs, who held the same PS III position as Benson, from coming against Benson for the position. As stated by Plaintiff, Lynn Hubbard:

- A. Ms. Benson was selected, being positioned for the job. And the only purpose that I can see taking that substitution clause out was to prevent me from applying for it. . . .
- Q. The complaint says that this intentional discrimination was done with malice. What do you mean when you say with malice?

- A. With intent to intentionally discriminate against me, with a total disregard for my contribution to my job and to the Department of Mental Health, to make that decision solely based on the applicant because I believe they are desiring to maintain a black Personnel Director.

(Exhibit 107, Deposition of Lynn Hubbard, p. 133, lines 1 through 4 and 12 through 21).

The Plaintiffs have properly sued their employer, the Department, for Title VII employment discrimination. Taylor v. Alabama, 95 F. Supp. 2d 1297 (M.D. Ala. 2000). Thus, the Department is a proper party defendant under Title VII. Id. at 1309.

The Plaintiffs have also sued Defendants Houston, Dillihay, Ervin and Benson in their individual capacities for violating, while acting under color of law, Plaintiffs' constitutional rights to equal protection and due process, as secured by the Fourteenth Amendment. Thus, Plaintiffs have asserted a proper civil rights claim under 42 U.S.C. § 1981 and § 1983. Taylor, 95 F. Supp. 2d at 1309, 1314. Plaintiffs have likewise sued these same Defendant under § 1983 for equitable relief, which again is a proper claim. Id. at 1311.

As set forth herein, there is also substantial evidence of supervisory official liability under § 1983 in that Defendants Houston, Dillihay, Benson and Ervin all individually participated in the violation of Plaintiffs' constitutional rights. Taylor, 95 F. Supp. 2d at 1315.

Accordingly, Plaintiffs have stated viable and enforceable claims against Defendants for racial discrimination and Equal Protection and Due Process violations.

**B. Plaintiffs are Similarly Situated -The Omission of the Substitution Provision for the Assistant Personnel Manager Position Was Discriminatory.**

*1. The Plaintiffs Are Similarly Situated Based on Experience and Abilities.*

Defendants, claiming that Plaintiffs are not "similarly situated," state on page 32 of their Supplemental Memorandum Brief: "Plaintiffs do not meet the minimum qualifications for the

position of Departmental Assistant Personnel Manager.” Thus, Defendants claim that Plaintiffs cannot establish a prima facie case of discrimination.

However, Defendants are again simply wrong. Plaintiffs do meet the minimum qualifications for the position. (Exhibit 107, Deposition of Lynn Hubbard, p. 104, lines 19 through 22). Yet Defendants have omitted the substitution clause to prohibit and preclude Plaintiffs from satisfying the minimal educational qualifications by using, in lieu thereof, their many years of professional administrative experience.

According to both Owens and Hubbard, the only thing that kept them from applying and competing for the Assistant Personnel Management position was the omission of the substitution provision in the *Specification*. Otherwise, they have the minimum required work experience; the required knowledge, skills and abilities; and even enough work experience to substitute for the minimum education requirements using the two-for-one standard (i.e., two years for every one year of education). (Exhibit 106, Deposition of Joan Owens, p. 74, line 8). Indeed, their present positions of PSC III also requires a bachelor’s degree but Plaintiffs were able to obtain their present jobs using substitution, which was intentionally denied them in this case for discriminatory purposes.

2. *The Substitution Clause Is Being Used to Discriminate.*

Indeed, when the Assistant Personnel Manager position was created in 2005 no less than 13 similar professional managerial positions existed in the Department, many of which require master’s degrees, *that allow substitution*. According to Defendants, exempt positions in the Department are classified based on the complexity, demands, nature of work performed, and necessary qualifications, with the pay grade corresponding thereto. (Exhibit 110, Deposition of Otha Dillihay p. 274, line 5 through p. 275, line 22). These thirteen similar positions allowing substitution are

as follows:

- (a) Nursing Home Administrator I (pay grade 79) - A person in this position manages a small long-term care facility/nursing home. A bachelor's degree is required. (Plaintiffs' Exhibit 84).
- (b) Nursing Home Administrator II (pay grade 80) - A person in this position manages a large long-term care facility. A bachelor's degree is required. (Plaintiffs' Exhibit 85).
- (c) Administrator III (pay grade 77) - A person in this position performs professional administrative work including supervision of professional and non-professional staff. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 86).
- (d) Administrator IV (pay grade 79) - A person in this position performs professional administrative work including supervision of professional and non-professional staff, and directs a segment of the state's mental health program. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 87).
- (e) Administrator V (pay grade 80) - A person in this position performs professional administrative work including supervision of professional and non-professional staff and may assist in the operation of a mental health facility. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 88).
- (f) Administrator VI (pay grade 83) - A person in this position performs professional administrative work including supervision of professional and non-professional staff, and manages an administrative division. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 89).

- (g) Assistant Facility Director (pay grade 83) - A person in this position assists in directing services and programs at a mental health facility. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 91).
- (h) Staff Development Specialist V (pay grade 80) - A person in this position plans, organizes, coordinates, and implements a comprehensive human resources development program. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 92).
- (i) Director of Residential Services (pay grade 80) - A person in this position directs residential care, recreational and support activities for clients. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 93).
- (j) Personnel Manager I (pay grade 75) - A person in this position is responsible for personnel management work at a small mental health facility. A bachelor's degree is required. (Plaintiffs' Exhibit 101).
- (k) Personnel Manager II (pay grade 79) - A person in this position is responsible for personnel management work at a moderate-size mental health facility. A bachelor's degree is required. (Plaintiffs' Exhibit 102).
- (l) Personnel Manager III (pay grade 82) - A person in this position is responsible for personnel management work at a large mental health facility. A bachelor's degree is required. (Plaintiffs' Exhibit 103).
- (m) Personnel Manager IV (pay grade 85) - A person in this position is responsible for personnel management at the Central Personnel Office. A bachelor's and master's degree is required. (Plaintiffs' Exhibit 104).

3. *The Anticipated Wage & Class Study Is Irrelevant to Past Discrimination.*

Defendants contend that Benson's job was created in anticipation of a Wage and Class Study which has since been done regarding its classification system and proposed revisions to same. See Defendants' Memorandum Brief at pp. 14, 16. However, Benson's position was created in 2005, almost two years before the Wage and Class study was conducted in 2007. (Exhibit 108, Deposition of Henry Ervin, p. 175, line 2 through 11). Defendants acknowledge they did not know what the Wage and Class Study would reveal when Benson's position was created. (Exhibit 108, Deposition of Henry Ervin, p. 174, lines 15 through 18). Indeed, Defendants admit that the Wage and Class Study results have never been adopted. (Exhibit 108, Deposition of Henry Ervin, p. 174, lines 19 through 22). Thus, a Wage and Class Study made after the fact and still not adopted three years after the discriminatory events occurred in this case, is totally irrelevant to the Plaintiffs' claims, and is raised by Defendants here as a pretext to try to cover their discriminatory conduct.

In fact, the thirteen previously discussed *Specifications* were **the** *Specifications* in effect in 2005 and 2006 when the Assistant Personnel Manager position was created and filled by Benson. According to Benson, the *Specifications* contain a reference at the bottom right-hand corner of each page telling when the *Specifications* were last modified, for example "9/06" or September 2006. (Exhibit 109, Deposition of Marilyn Benson, p. 14, lines 19 through 123; p. 5, line 3). Most all of the above *Specifications* referenced above and produced herewith were last modified in August or September 2006 or later, well after the Assistant Personnel Manager position was created and Benson was awarded the position.<sup>7</sup>

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<sup>7</sup> According to the exhibits, the following positions were last modified in September 2006: Nursing Home Administrator I; Nursing Home Administrator II; Administrator III; Administrator IV; Administrator VI; Staff Development Specialist V; Personnel Manager I; Personnel Manager II; and Personnel Manager III. The position of Personnel Manager IV was last modified in August



4. *Defendant Houston and the Department Allowed Others to Use Substitution Both During and After the Discrimination Here.*

Indeed, both during and after the creation of the position of Assistant Personnel Manager, the Department, and Houston personally,<sup>8</sup> approved the promotion of an applicant using substitution for a higher classified position in the Department. In March 2005 Jim Elliott was promoted from PS III (the same position held by Plaintiffs) to Personnel Manager III, using substitution of experience for the minimum educational requirements. (Plaintiffs' Exhibit 23). Elliott's promotion allowed him to achieve a seven (7) stage pay increase from the 75 pay grade of a PS III to the class 82 pay grade of Personnel Manager III. (Plaintiffs' Exhibit 23; see also Plaintiffs' Exhibit 103). Elliott is now the Human Resources Director for Bryce Hospital, the largest mental health facility in the state, where he oversees the entire personnel department of almost 10 people. (Exhibit 108, Deposition of Henry Ervin, p. 82, lines 1 through 20).

The *Specification* for the Personnel Manager III position now held by Elliott requires a bachelor's degree in Personnel Management, Business Administration, Public Administration or related field. (Plaintiffs' Exhibit 103). Elliott has only a bachelor's degree in Social Work, which is not a related field. (Plaintiffs' Exhibit 118; Plaintiffs' Exhibit 113, Affidavit of Lynn Hubbard, ¶ 8). Thus, Elliott obtained his new position based on experience alone.

By contrast to Elliott's promotion, the Assistant Personnel Manager position held by Benson is only a five (5) stage pay increase to a class 80 pay grade. (See Plaintiffs' Exhibits 19, 46 and 62). The Assistant Personnel Manager position does not oversee the Central Personnel Office, which only

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2006. (Plaintiffs' Exhibit 104, p. 2). The position of Administrator V was last modified in March 2007, more than a year after Benson was placed in her new job. (Plaintiffs' Exhibit 88).

<sup>8</sup> Before any applicant using substitution can be awarded a job, Commissioner Houston must personally approve the award. (See Plaintiffs' Exhibit 23).

employs only around seven people. Furthermore, Benson serves as Human Resources Director only in the absence of the Ervin. (Plaintiffs' Exhibits 19 and 46). Thus, using substitution, Elliott was clearly promoted to a higher position, with greater duties and responsibilities, than Benson.

Similarly, in 2006, after the creation of the Assistant Personnel Manager position, the Department and Commissioner Houston allowed Christopher Vilamaa to apply for and receive a promotion to Administrator V in the Central Office utilizing substitution of experience for the required degree. (Plaintiffs' Exhibit 88). The position of Administrator V is a position of "advanced administrative work . . . directing and coordinating a large segment of the State's Mental Health program." (Plaintiffs' Exhibit 88). The position has a pay grade of 80, the same pay grade as Benson's position, but unlike Benson's position requires both a bachelor's degree and a master's degree. (Plaintiffs' Exhibit 88).

In summary, the Department and Defendant Houston, individually, have allowed Elliott to go from PS III to Personnel Manager III, using substitution, and serve as Human Resources Director at the largest mental health facility in the State of Alabama. Moreover, the Department and Houston have allowed Vilamaa, using substitution, to obtain a position as Administrator V in the Central Office using substitution. However, the Department and Defendants would not allow Plaintiffs to use substitution to compete for a lower lever position, with less duties and responsibilities than the position held by Elliott, although Plaintiffs have significant work experience in human resources and personnel management. The intentional exclusion of substitution for the position of Assistant Personnel Manager in the Department by the Defendants was clearly discriminatory, inconsistent, illogical, arbitrary and capricious.

5. *The Omission of the Substitution Clause is Facially Discriminatory Where Defendant Ervin Holds His Job Based On Substitution.*

In fact, the discriminatory, inconsistent, illogical, arbitrary and capricious behavior of the Defendants is self-evident even with Defendant Ervin's job. At all times relevant to this Complaint, Ervin's position of Personnel Manager IV required both a bachelor's and master's degree in Personnel Management, Business Administration, Public Administration or related field.<sup>9</sup> (Plaintiffs' Exhibit 104). Ervin does not have a master's degree, and his bachelor's degree is in Education with a major in History, which is not a "related field." (Exhibit 108, Deposition of Henry Ervin, p. 62, lines 11 through 17; Exhibit 113, Affidavit of Lynn Hubbard at ¶ 8). Thus, the only way Ervin qualified for his job as Human Resources Director was using substitution based on his work experience alone.

In fact, according to Ervin, his job as Human Resources Director is even more demanding and more difficult, and has greater responsibility than the Assistant Personnel Manager position held by Benson. (Exhibit 108, Deposition of Henry Ervin, p. 270, lines 15 through 17). Yet, Ervin feels very confident in his abilities and competence to serve as Human Resources Director although he lacks the minimum educational requirements for such position. (Exhibit 108, Deposition of Henry Ervin, p. 169, lines 8 through 16). In fact, Ervin admits that given the Assistant Personnel Manager position's educational requirements he would not even qualify to apply for the job:

Q. Mr. Ervin, isn't it true that even you as departmental personnel manager would not have qualified for this position under the qualifications set forth in Plaintiffs' Exhibit 46?

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<sup>9</sup> The *Specification* for Ervin's job has now been changed since Ervin has accepted a new position with the Department in Tuscaloosa. However, the *Specification* attached as Plaintiffs' Exhibit 104 was at least still in effect in August 2006 ("8/06" is printed on the bottom-right corner of the second page of the *Specification*), well after Benson was promoted to Assistant Personnel Manager.

...

- A. Based on this particular job specification, this particular announcement, no, I would not have according to what we were looking for.

(Exhibit 108, Deposition of Henry Ervin, p. 177, lines 15 through 19; p. 178, lines 3 through 6).

Accordingly, the Defendants' omission of the substitution clause for the Assistant Personnel Manager position while allowing its use for other similar or higher positions is prima facie evidence of discrimination, and arbitrary and capricious conduct. Vessels v. Atlanta Independent School System, 408 F. 3d 763, 772 (11<sup>th</sup> Cir. 2005) ("[T]he fact that [the employer] promoted . . . an employee who was unqualified by [the employer's] own criteria over [an employee who was so qualified] supports an inference of discrimination.") (quoting Bass v. Bd. of County Commissioners, 256 F. 3d, 1095, 1108 (11<sup>th</sup> Cir. 2001)).

**C. There is Direct Evidence of Racially Discriminatory Intent Against Plaintiffs.**

There is direct evidence that Defendants intentionally discriminated against the Plaintiffs on the basis of race in the creation of the position of Departmental Assistant Personnel Manager. Direct evidence is evidence such as a statement which, if believed, prove the existence of discriminatory motive "without inference or presumption." Carter v. Three Springs Residential Treatment, 132 F. 3d 635, 641 (11<sup>th</sup> Cir. 1998). As the Defendants acknowledge on page 26 of their Memorandum Brief, "To constitute direct evidence, the statement must reflect a 'discriminatory or retaliatory attitude correlating to the discrimination or retaliation complained of by the employee' . . . and made 'by a person involved in the challenging decision.'" Quoting Caban-Wheeler v. Elsea, 904 F.2d 1549, 1555 (11<sup>th</sup> Cir. 1990) and Trotter v. Board of Trustees of Univ. of Alabama, 91 F.3d 1449, 1453-54 (11<sup>th</sup> Cir. 1996).

Defendants acknowledge that Defendant Dillihay was instrumental in the creation of the

position of Departmental Assistant Personnel Manager and the development of its *Specification* for the position. Defendant Dillihay approved the omission of the substitution provision and presented the *Specification* to Defendant Houston for his final approval. Defendant Houston testified that he did not make any changes to the *Specification* presented to him by Dillihay. (Exhibit 111, Deposition of John Houston, p. 114, lines 15 through 22). Defendant Houston further testified that he consulted with Dillihay throughout the process of creating and defining the job and the *Specification*. (Exhibit 111, Deposition of John Houston, p. 143, lines 6 through 18). Dillihay was Ervin's direct supervisor and the head of the Department's Administrative Division where the Central Personnel Office is located.

According to David Petty, a former administrative assistant at the Department of Mental Health, Otha Dillihay stated in his immediate presence, on multiple occasions, that there were too many whites in power positions in the Department and that more blacks were needed in management. Petty testified:

Q. What did you hear Mr. Dillihay say?

A. I heard him say something to the effect of this department has so many white people in power positions, it needs more black people in those positions, something to that effect. . . .

Q. But you feel reasonably certain that he said something along the lines that there were too many white people working in the department?

. . .

Q. You can answer the question.

A. Yes.

Q. Do you feel reasonably certain that he said something along the line that there were more blacks needed in management positions?

A. Yes.

(Exhibit 120, Deposition of David Petty p. 20, line 21 through p. 21, line 16). Petty further stated:

Q. Was it your impression, Mr. Petty, that Mr. Dillihay wanted to change the Department and in particular, place more blacks in management positions in the Department?

A. Absolutely.

(Exhibit 120, Deposition of David Petty, p. 28, lines 15 through 20).

In his deposition Dillihay admitted that he was once a member of an organization that was “committed to strengthening the position of blacks within public administration” and that the objective of the organization “was to increase the number of blacks serving in executive positions in public service.” (Exhibit 110, Deposition of Otha Dillihay, p. 48, lines 6 through 22, and p. 51, lines 9 through 21).

Indeed, Dillihay himself admitted his own personal bias against Plaintiffs. According to Dillihay, Benson is “top-notch” but Owens and Hubbard are not. (Exhibit 110, Deposition of Otha Dillihay, p. 246, lines 6 through 8 and 12 through 14; p. 246, line 21 to p. 247, line 6). Defendant Dillihay also testified that he highly approves of Benson’s promotion to the Assistant Personnel Manager position but that he would never approve of Owens’ or (Hubbard’s) promotion to such position. (Exhibit 110, Deposition of Otha Dillihay, p. 246, line 2 through p. 247, line 23).

Q. Knowing what I just told you about Joan Owens, do you think it would have been a good idea that the Department at least have the benefit of her application - -

A. No, sir.

Q. - - in considering - -

A. Absolutely not.

...

Q. Would there have been any harm to the Department if Joan Owens or Lynn Hubbard had had an opportunity to apply for this position?

A. Would it have been any harm?

Q. Yes.

A. Other than a waste of staff resources, which I consider to be very valuable to that organization, I can't think of anything I would say. And even with the qualifications being there, I don't think I would have had any objection to them applying, but the same way I wouldn't want to waste the candidate's time I wouldn't want to waste the Department's resources.

(Exhibit 110, Deposition of Otha Dillihay, p. 221, lines 11 through 18; p. 223, line 19 through p. 224, line 5).

Accordingly, there is direct evidence of intentional racial discrimination by the Defendants, and especially Defendant Dillihay, against the Plaintiffs.

Defendants may argue in rebuttal that they would have made the same decision to omit the substitution clause irrespective of Dillihay's statement. However, as previously discussed, Defendants allowed others to use substitution both during and after the creation of Benson's new position, and continued to use the clause for 13 similar or higher ranking positions long after Benson's promotion to Assistant Personnel Manager. The Defendants intentional failure to use the substitution clause for the position of Assistant Personnel Manager was discriminatory, arbitrary and capricious and was a violation of Plaintiffs' legal and constitutional rights.

There is direct and substantial evidence of intentional racial discrimination and an intentional violation of Plaintiffs' legal and constitutional rights which require summary judgment be denied. Therefore, the Defendants have failed to meet their heavy burden of proof of showing that there are no material issues of fact and that they are entitled to summary judgment as a matter of law.

**D. There is Substantial Evidence that the Defendants' Contention that a Degree was Needed for the Position is Pretextual.**

There is also overwhelming and substantial evidence that the Defendants' contention that a degree was needed for the Assistant Personnel Manager position is a pretext for deliberate and illegal discrimination against Owens and Hubbard. Pretext is "evidence that the employer's reason was not the actual reason relied on, but was rather a false description of its reasoning - albeit one based on a real difference in qualifications after the fact." Dennis v. Columbia Colleton Medical Ctr., Inc., 290 F. 3d 639, 648 n. 4 (4<sup>th</sup> Cir. 2002). As stated by the court in Dennis:

It is not farfetched to suppose that discriminatory employers might be likely to choose to emphasize at trial those characteristics on which their chosen candidates were superior in order to construct pretextual explanations that are as plausible as possible. If plaintiffs were required to show they were superior on the criteria chosen at trial by their employers, rather than being free to show that the criteria were not the ones actually used, the McDonnell Douglas frame-work would become a shield for employers rather than a tool to frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext.

*1. A Degree Isn't Necessary to be an Assistant Personnel Manager.*

Defendants claim that a four-year degree is necessary for the Assistant Personnel Manager position and thus Plaintiffs, who do not possess degrees, cannot claim discrimination by the fact the substitution provision was omitted. (Defendants Memorandum Brief at 50).

However, the Defendants admit that a person can be competent to perform the duties and responsibilities of Assistant Personnel Manager without having a degree and based on experience alone. Defendant Dillihay testified:

Q. Mr. Dillihay, for the position of Assistant Department Personnel Manager, can you have a highly qualified person who does not have the required degree?

A. Yes.



Q. Isn't it possible to have highly qualified people based upon working experience alone?

A. Yes.

(Exhibit 110, Deposition of Otha Dillihay, p. 220, lines 5 through 11; see also Exhibit 111, Deposition of John Houston, p. 137, line 21 through p. 138, line 7).

The Defendants' admissions are readily confirmed by the fact the Owens served as Human Resources Director for twelve years at a local hospital before coming to the Department. Moreover, both Owens and Hubbard have served as acting Personnel Managers at various facilities, including Tarwater and Greil Hospital, while working at the Department.

In fact, the Plaintiffs' current positions as PS III requires a bachelor's degree. (Plaintiffs' Exhibit 62, p. 2). However, Plaintiffs were able to qualify for and capably perform their present positions by substituting their extensive experience for the required minimum education.

Moreover, Benson testified that she researched similar positions with other state agencies in Tennessee, Georgia and Florida. (Exhibit 109, Deposition of Marilyn Benson, p. 174, lines 9 through 14). According to Benson, for the same or similar jobs both Georgia and Tennessee allow substitution of experience for the minimum educational requirements. (Plaintiffs' Exhibits 70, 71, and 72; Exhibit 109, Deposition of Marilyn Benson, p. 178, lines 18 through 23).

Moreover, Defendants cannot claim a degree is required for the Assistant Personnel Manager position when Henry Ervin, the Human Resources Director, holds his position based on experience alone. Beyond argument, the history degree possessed by Ervin does not qualify him to be a Human Resources Director.

Thus, when Defendants claim a degree was necessary for the Assistant Personnel Manager job, they actually mean a degree was necessary for the job in order to prevent Plaintiffs Owens and

Hubbard from applying for and competing for the position. This fact is self-evident from Ervin's testimony in referring to the Assistant Personnel Manager position: "I'm not saying experience should not be a factor. I'm not saying that. It shouldn't be a factor *in this particular position* . . . ." (Exhibit 108, Deposition of Henry Ervin, p. 166, lines 14 through 20).

2. *The Assistant Personnel Manager Position was Solely Designed for Benson, Who Was Already Serving As Acting Director and Receiving More Favorable Treatment.*

In addition to the fact that Marilyn Benson researched and prepared the *Specification* for the Assistant Personnel Manager position she now holds, there is additional evidence that the position of Assistant Personnel Manager was designed just for Benson.

Since 2002, three years prior to the creation of the Assistant Manager position, Benson was being evaluated annually as "Acting Director of Human Resources during the absence of the Director." (Plaintiffs' Exhibit 57). However, serving as acting director is not one of the duties or responsibilities for a PS III. (Plaintiffs' Exhibit 62). In addition, Ervin would sometimes ask Plaintiffs to oversee the office in his absence but Plaintiffs' oversight were never included in their annual evaluations. (Exhibit 113, Affidavit of Lynn Hubbard at ¶ 10; Exhibit 112, Affidavit of Joan Owens at ¶ 11).

Moreover, one of the KSAs for the position of Departmental Assistant Personnel Manager is the ability to research grants and funding sources. (Plaintiffs' Exhibits 19 and 46). As would be expected, Marilyn Benson possesses such knowledge, skills and abilities, based upon her work as a Planning Specialist in the Department between 1987 and 1994. (Plaintiffs' Exhibit 67). However, Benson testified in her deposition that she has never researched or written any grants during the entire time that she has been employed in the Central Personnel Office. (Exhibit 109, Deposition of Marilyn Benson, p. 204, lines 2 through 7). Furthermore, the Department of Mental Health has its

own section, i.e., the Office of Policy and Planning, which exists and is responsible for researching and identifying grant funding sources and to coordinate efforts regarding grant funding sources. Thus, including within the KSA a skill possessed by Benson but never used in the Department is additional proof that the Assistant Personnel Manager position was designed solely for Benson and to give her a competitive advantage over others while prohibiting Plaintiffs from applying and competing for the same job.

The Assistant Personnel Manager position was created and designed for and around Benson so as to give her an exclusive advantage for the position. The Defendants' insistence that a degree was necessary is a sham and pretext to cover their discriminatory actions and conduct.

3. *Benson Researching and Preparing the Specification and Announcement, and then Being Encouraged to Apply by Ervin, Was Highly Improper and Unprofessional.*

Defendants' contention that a degree is required for Benson's job is also intended to cover the fact that both Ervin and Benson (as well as Dillihay and Houston) have all engaged in highly improper and unprofessional conduct. It is undisputed that after having Benson research and prepare the *Specification* for the Assistant Personnel Manager position, Ervin encouraged her to apply for the position. (Exhibit 109, Deposition of Marilyn Benson, p. 159, lines 4 through 6).

Judith Johnston is a retired twenty-nine-year (29-year) veteran of the Department of Mental Health. Johnston previously served as Director of Mental Retardation Facilities in the Division of Mental Retardation and was responsible for overseeing the management and operation of all state-wide facilities for the mentally retarded operated by the Department. Johnson also served on the JEC and the Department's Policy and Procedure Committee. According to Johnston:

As a past member of the Department's Policy and Procedure Committee, it would violate the policies, rules and regulations of the Department for management to hand-pick or preselect an employee to serve as Departmental Assistant Personnel Manager.

It would also violate the Department's policies, rules and regulations for management to design the qualifications and specifications for the position of Departmental Assistant Personnel Manager around Marilyn Benson - or any one individual - and thereby give Marilyn Benson a competitive advantage over other potential applicant. It would also be highly improper and unprofessional for Henry Ervin to use Marilyn Benson to research and prepare the job qualifications and specification for an exempt position and then encourage Marilyn Benson to apply for the position. It would also be highly improper and unprofessional for Marilyn Benson to prepare the qualifications and specification for a new exempt position around her own qualifications and KSAs, and then apply for such position.

Johnston Affidavit, ¶ 21. And, yet, this is exactly what happened!!

4. Defendants Failed to Follow the Applicable Process and Procedures.

Evidence that Defendants failed to follow proper policy and procedure is relevant to pretext. Blackledge v. Alabama Department of Mental Health and Mental Retardation, Case No. 2:06-cv-321-ID, 2007 WL 3124452 at \* 23 ( Oct. 25, 2007 M.D. Ala.). As set forth by the Affidavit of Judith Johnston, Defendants violated the Department's rules and regulations by designing the qualifications and specifications for the Assistant Personnel Manager position around Benson, and thereby giving Benson an exclusive advantage for such position.

Defendants also violated Department policies and procedure in the creation of the position. The policy for the creation of a new position and the establishment of the position's *Specification* is for a new position and its specification to always be presented to the Job Evaluation Committee ("JEC") for review and approval or rejection. The JEC is an advisory committee established by Commissioner Houston. After the JEC has an opportunity to consider a job and its specifications, and approve or deny same, Commissioner Houston then may review the actions of the JEC and sustain or override the JEC.

As discussed earlier, the *Specification* for Benson's position was completed no later than February 2005. Defendant Houston testified that he was involved in the creation of the job early on

and was already fully aware of the position when the “formal” request to establish the position was made to him by Ervin in June 2005. (Exhibit 111, Deposition of John Houston, p. 141, line 15 through p.142, line 3; p. 145, lines 8 through 21; and p. 159, lines 1 through 10). By the time Ervin made his “formal” request the position was already on file and in the records of the State Personnel Office and had been made a part of the State Finance Director’s budget. (Plaintiffs’ Exhibits 49 and 51).

Furthermore, when the Commissioner allegedly approved the position in June 2005, it still had not been presented to the JEC. Nonetheless, the position was belatedly presented to the JEC in July 2005, which even the Defendants acknowledge was pointless. According to the Defendants’ Memorandum Brief at page 15: “At that meeting, the JEC approved the position of Departmental Assistant Personnel Manager for recommendation to the Commissioner, *an act that was actually unnecessary since the Commissioner had already approved the position.*” (Emphasis added).

Yet the position was presented to the JEC after the fact because, by July 2005, Hubbard had already twice approached Commissioner Houston with claims that the position was being created for Benson and that her rights were being violated. (Exhibit 107, Deposition of Lynn Hubbard, p. 141, line 6 through p. 142, line 1; p. 144, line 22 through p. 145, line 4). Since Ervin was Chairman of the JEC, and Benson was the Committee’s secretary, it makes perfect sense that the position would be belatedly presented to the JEC as a pretext to cover the Defendants’ discriminatory actions and conduct. (Exhibit 109, Deposition of Marilyn Benson, p. 300, line 22 through p. 301, line 5). Indeed, Defendant Houston testified that he would have approved the *Specification* regardless of what the JEC did.

Moreover, the Defendants have previously represented to the Equal Employment Opportunity

Commission (“EEOC”) that the *Specification* was consistent with actions of the JEC. (Plaintiffs’ Exhibit 117). Plaintiffs do not dispute that the position was approved by the JEC. However, the JEC never approved the *Specification* as the process requires.

Judith Johnston, a member of the JEC, was present the day that the position of Departmental Assistant Personnel Manager was approved by the JEC. According to Johnston, the *Specification* and qualifications for the position were never presented to and never considered by the JEC. Indeed, the minutes of the JEC’s meeting, which were prepared by Defendant Benson, do not reflect the JEC’s approval of the position’s *Specification* or qualifications, although they clearly reflect the JEC approved the specifications and qualifications for other positions. (Exhibit 109, Deposition of Marilyn Benson, p. 197, line 6 through p. 198, line 5).

Accordingly, there is substantial evidence that the Defendants did not follow their own policies, rules and procedures for the creation of the Assistant Personnel Manager position, and that such position was presented to the JEC only to try to cover up the Defendants’ discrimination.

5. *Defendants Make Personal Attacks on Owens and Hubbard.*

Another example of pretext is the Defendants repeatedly attacking Owens and Hubbard, and their abilities, which is further evidence of an intent to discriminate. Defendant Dillihay testified that Marilyn Benson is “top-notch” but that Owens and Hubbard are not. (Exhibit 110, Deposition of Otha Dillihay, p. 246, line 6 through p. 247, line 6). Defendant Ervin testified that Marilyn Benson is competent to perform the job of Departmental Assistant Personnel Manager but Owens and Hubbard are not. (Exhibit 110, Deposition of Otha Dillihay, p. 170, lines 2 through 5). Furthermore, in their Memorandum Brief in Support of Summary Judgment, the Defendants have quoted and attached the Affidavit of Susan Chambers who stated the following regarding Owens: “She lacked

the knowledge, experience or ability to capably manage a personnel office in a hospital setting.” (Defendants’ Exhibit 2 to Memorandum Brief in Support of Motion for Summary Judgment).

However, Owens has served as a personnel manager in a hospital setting while working for the Department and has always received a rating of “exceeds standards” on her appraisals. (Plaintiffs’ Exhibit 59). Likewise, Lynn Hubbard on her appraisal scores has always received a rating of “exceeds standards.” (Plaintiffs’ Exhibit 58). Moreover, Owens was employed for Elmore Community Hospital for twenty-one (21) years where she was a member of the hospital’s Executive Team, Personnel Director, Director of Physician Recruitment, and directly supervised four hospital departments with nineteen (19) employees.

Owens’ abilities are defended by Judith Johnston, who once supervised Owens. Johnston is also personally familiar with Ervin and Benson; Johnston was on the interview panel when Ervin and Benson both applied for the Director of Human Resources position currently held by Ervin. According to Johnston:

In my experience Ms. Owens is one of the most competent and professional personnel specialist I have ever known. I found Ms. Owens to be very familiar with federal employment law and all state personnel laws, rules, regulations and policies concerning merit and exempt positions. Indeed, for me Ms. Owens was the go-to-person in Central Personnel who could assist me and provide guidance and answer employment questions on most any matter brought to her attention. I found Ms. Owens to be more competent and knowledgeable about rules, regulations, policies and procedures, and the practical application of those rules, regulations, policies and procedures related to personnel matters, than either Henry Ervin or Marilyn Benson.

(Affidavit of Judith Johnston, ¶ 9).

In summary, the Defendants’ personnel attacks on the Plaintiffs are not evidence that the Plaintiffs could not competently perform the duties and responsibilities of Assistant Personnel Manager. In fact, Defendants have presented no evidence that Plaintiffs could not perform such

duties. Instead, the Defendants' attacks are further evidence of intentional discrimination against the Plaintiffs.

6. *There is a Pattern and Practice of Creating Management Jobs for Blacks.*

There is substantial evidence that the Defendants' discrimination here is part of a pattern and practice of creating managerial jobs for black employees in the Department. Judith Johnston knows of at least two managerial jobs that were created for blacks, but she has no knowledge of managerial jobs being created for whites. According to Johnston, at one time the Central Personnel Office was responsible for staff development and Commie Carter, a black female and Central Personnel Office employee, was assigned staff development duties. Subsequently, a separate staff development office was created, having the same duties and responsibilities that had been previously assigned to Commie Carter, and Commie Carter was promoted and placed in charge of the office.

In addition, the three service divisions of the Department (Mental Health, Mental Retardation and Substance Abuse) once handled all contractual matters for their respective divisions within the Department's Finance office. Subsequently, a separate contract office was created for the Department and a black employee, Kathy Townsend, who previously handled contract matters for the SA division, was promoted and placed in charge of the Department's contracts office without being interviewed for the promotion.

Finally, Henry Ervin testified that he has been awarded the position of Manager of Employee Relations and assumed such position effective July 1, 2008. (Exhibit 108, Deposition of Henry Ervin, p. 273, line 2). This position was supposed to be filled by "open competition." However, Commissioner Houston directed Henry Ervin to do the research and prepare the job *Specification*, just as Henry Ervin had Marilyn Benson perform the research and prepare the job specification for



the position Benson now holds. (Exhibit 108, Deposition of Henry Ervin, p. 278, lines 11 through 15).

Accordingly, there is substantial evidence that the Defendants' claim that a degree was needed for the job held by Benson was a pretext given the Defendants' past pattern and practice of creating managerial positions solely for blacks in the Department.

**II. IN ADDITION TO UNLAWFUL DISCRIMINATION, THERE IS SUBSTANTIAL EVIDENCE THAT COMMISSIONER HOUSTON AND THE DEPARTMENT HAVE ENGAGED IN ARBITRARY AND CAPRICIOUS CONDUCT AND WITH DELIBERATE INDIFFERENCE TO PLAINTIFFS' CONSTITUTIONAL RIGHTS.**

**A. Commissioner Houston Directly Involved Himself in the Creation of the Assistant Personnel Manager Position.**

Commissioner Houston admits he was involved in the creation and development of the position of Assistant Personnel Manager long before Ervin formally requested permission to create the position in June 2005. (Exhibit 111, Deposition of John Houston, p. 145, lines 8 through 22). Houston testified that he fully approved the Assistant Personnel Manager position and its *Specification*, and likely would have approved same regardless of any recommendation from the JEC. (Exhibit 111, Deposition of John Houston, p. 157, lines 2 through 7).

According to Houston, he has a very hands-on management style involving key positions that report directly to him. (Exhibit 111, Deposition of John Houston, p. 43, lines 9 through 19). However, the position of Departmental Assistant Personnel Manager does not report directly to him, but instead reports to Henry Ervin who, in turn, reports to the Associate Commissioner of Administration. (Exhibit 111, Deposition of John Houston, p. 90, lines 12 through 23).

Houston admits that Hubbard approached him twice and expressed concerns regarding the change in the substitution rule and specifically expressed her concerns that the Assistant Personnel

Manager position was being created solely for Benson. (Exhibit 111, Deposition of John Houston 105, 108, 109-10). According to Houston, if the job of Departmental Assistant Personnel Manager was created for Marilyn Benson, then that would violate the policies, rules and regulations:

Q. If the job of assistant personnel - -department personnel manager was created for Marilyn Benson, would that violate any one of the policies we've just discussed?

A. I would think so. That's a hypothetical. Yes.

(Exhibit 111, Deposition of John Houston, p. 100, line 23 through p. 101, line 5).

Yet the only thing Houston did to address Hubbard's concerns was to consult with Dillihay about Hubbard's concerns, and accept Dillihay's representations. (Exhibit 111, Deposition of John Houston, p. 110, lines 5 through 23; p. 119, lines 9 through 20). Yet Houston admits that he terminated Dillihay because people "did not trust him." (Exhibit 111, Deposition of John Houston, p. 211, line 19 through p. 212, line 6). Moreover, Houston also admits he did nothing to ensure the specification and qualifications for the position were not formulated to give anyone a competitive advantage. (Exhibit 111, Deposition of John Houston, p. 103, lines 1 through 23). According to Houston, he did not do any of the following to address, investigate or otherwise follow up on Hubbard's complaints:

- a. He did not obtain an outside panelist to develop the *Specification* for the position (Exhibit 111, Deposition of John Houston, p. 89m lines 16 through 23);
- b. He never asked Dillihay or Ervin whether the qualifications and *Specification* were designed to give Benson or any employee a competitive edge (Exhibit 111, Deposition of John Houston, p. 104, lines 1 through 7; p. 105, lines 3 through 9);
- c. He never asked anyone who prepared the *Specification* and the KSAs expressed

therein (Exhibit 111, Deposition of John Houston, p. 115, lines 9 through 6);

- d. He never asked anyone if Benson had the same knowledge, skills or abilities referenced in the KSAs (Exhibit 111, Deposition of John Houston, p. 115, line 20 through p. 116, line 14); and
- e. He never asked anyone if Benson was already performing work similar to that referenced in the *Specification* (Exhibit 111, Deposition of John Houston, p. 117, lines 1 through 5).

Thus, there is substantial evidence that Houston was deliberately indifferent to the Plaintiffs' claims of discrimination, which were raised months before the Assistant Personnel Manager position was advertised and filled through so-called "open competition."

**B. Commissioner Houston Agreed to Omit the Substitution Provision Even Though He was Approving Other Positions that Utilized Substitution.**

At the same time the Assistant Personnel Manager position was created and approved by Houston, with the substitution provision omitted, Houston approved Jim Elliot using substitution to obtain a promotion from PS III (the same job held by Plaintiffs and formerly Benson) to Personnel Manager III. Houston admitted that Elliot's new position is a key job in the Department.<sup>10</sup> (Exhibit 111, Deposition of John Houston, p. 93, lines 9 through 23).

In 2006, after the interview process had begun to fill the Assistant Personnel position,

---

<sup>10</sup> Jim Elliot is the Personnel Manager at Bryce Hospital, the largest mental health facility in the state of Alabama. (Exhibit 108, Deposition of Henry Ervin, p. 82, lines 5 through 20). Bryce Hospital employs between six to seven-hundred employees and has its own personnel department containing ten employees. (Exhibit 111, Deposition of John Houston, p. 41, lines 9 through 22; p. 42, lines 3 through 10). The personnel office at Bryce has at least three to four more employees than the Central Personnel Office in Montgomery. (Exhibit 111, Deposition of John Houston, p. 41, lines 18 through 22; Exhibit 108, Deposition of Henry Ervin, p. 71, lines 11 through 21).

Houston also approved the promotion of Christopher Varlamaa, using substitution, to Administrator V (which requires a master's degree) in the Central Office. Thus, Houston has personally and arbitrarily used the substitution provision.

**C. Commissioner Houston Has No Standard for the Use, or Non-Use, of the Substitution Provision.**

Commissioner Houston admits that he is ultimately responsible for the the formulation and implementation of the classification system at the Department, and that under the Department's rule and regulations employees are not to be subjected to any form of employment discrimination or favoritism. (Exhibit 111, Deposition of John Houston, p. 97, lines 15 through 20; p. 100, lines 1 through 16). Yet, Houston admits the he allows the substitution provision to be used, or not used, based on the "uniqueness" of the circumstances:

Q. Let me show you Plaintiffs' Exhibit 23 [i.e., Houston's signed approval of Elliott's use of substitution].

...

Q. You approved it; correct?

A. Uh-huh (positive response).

Q. And Jim Elliott received a promotion from Personnel Specialist III, pay grade 75, to Personnel Manager III, pay grade 82, using substitution; correct?

A. Uh-huh (positive response).

Q. Is that correct?

A. That is correct.

Q. And you approved that?

A. That is correct.

...

Q. And you understand that Marilyn Benson went from a pay grade 75 to a pay grade 80 - -

A. If you say so.

Q. - - using job specs and job qualifications that did not allow substitution. Isn't that correct?

A. Yes.

Q. And you approved - - you approved Jim Elliott from a pay grade 75 to a pay grade 82 using substitution, didn't you?

A. If that's what is says.

Q. Now, is that fair?

...

Q. Is it fair that Marilyn Benson can compete for a job where there's no substitution and Joan Owens and Lynn Hubbard can't compete, but Jim Elliott can go for even a higher pay grade using substitution?

...

A. Substitution is not prohibited. It's allowed under certain circumstances. *Every circumstance is unique and should be considered.*

(Exhibit 111, Deposition of John Houston, p. 170, line 20 through p. 172, line 16; p. 172, line 20 to p. 173, line 2; p. 176, line 20 through 23) (emphasis added).

Based on Houston's testimony, it is clear that the Department, and ultimately Defendant Houston, have engaged in arbitrary and capricious conduct against Plaintiffs as a matter of law. Such arbitrary and capricious conduct is the basis for the clarification in Plaintiffs' Motion to Amend the Complaint regarding Count III, the Fourteenth Amendment cause of action. The Plaintiffs construe the Court's Order, denying their Motion to Amend the Complaint, as allowing the Plaintiffs to nonetheless address this matter and further clarify the basis of their Fourteenth Amendment claim

in their Response to the Defendants' Motion for Summary Judgment and potentially in the pre-trial order. (See Order of July 2, 2008 at p. 2).

### **III. THERE ARE MATERIAL ISSUES OF FACT UNDERLYING THE PLAINTIFFS STATE LAW CLAIMS.**

Plaintiffs have pled state law claims of negligence, wantonness and willful breach of duty; intentional interference with contractual and business relations; conspiracy; and respondent superior. Defendants do not dispute that it is against the rules, regulations and policies of the Department for Departmental officers and employees to discriminate or engage in favoritism regarding competitive employment at the Department. According to Defendants, creating a job solely for or around one employee, or otherwise giving an employee a competitive advantage in employment recruitment and selection would violate the Department's policies, rules and regulations.

There is substantial evidence that the Defendants wantonly and intentionally violated Department rules, regulations and policies by creating the Assistant Personnel Manager position solely for and around Defendant Benson, and in otherwise giving Benson a competitive advantage in the employment process while simultaneously precluding Plaintiffs from applying and competing for the same position. Thus, Plaintiffs have produced substantial evidence of viable tort claims against the Defendants for breach of duty and tortious interference with contractual and business relations.

Likewise, Defendants have failed to establish that they are entitled to state law immunity. Under Alabama law immunity is not available to a state officer or employee where he or she acts willfully, maliciously, illegally, fraudulently, in bad faith, beyond their authority or under a mistaken interpretation of the law. Taylor, 95 F. Supp. 2d at 1320-21. Given this standard Defendants clearly cannot claim immunity regarding the Plaintiffs' claims for willful or wanton breach of duty, or

intentional interference with contractual or business relations.

Furthermore, as recognized by the Alabama Supreme Court, “corporate officers or employees may individually commit the tort of intentional interference with business or contractual relations to which their corporation or employer is a party.” Hickman v. Winston County Hosp. Bd., 508 So. 2d 237, 239 (Ala. 1987). According to the court, a plaintiff can pursue a intentional interference claim against such officers or employees where the officers or employees act outside their employment or contrary to the best interest of the corporation in order to further their own goals or to injure another party. Id. at 239-40.

In this case there is substantial evidence that the Defendants Houston, Ervin, Dillihay and Benson wantonly, willfully and intentionally violated rules, regulations and policies of the Department with the intent to further their own racial interests and/or the personnel interest of Benson, and to injure the Plaintiffs. Thus, Plaintiff have firmly established material issues of fact regarding the Defendants intentional interference with business relations. Therefore, the Defendants Motion for Summary Judgment should be denied.

Finally, Plaintiffs have established a material issue of fact in support of their claim that the Defendants conspired to injure them. There is substantial evidence that the Defendants created the position of Assistant Personnel Manager solely for and based upon the qualifications of Marilyn Benson only, and omitted the substitution provision to prohibit Plaintiffs from competing against Benson. Commissioner Houston acknowledged that the Defendants could achieve such an objective, irrespective of whether the interview process was fairly conducted, with “complicity” between himself and Dillihay.

Q. Can the process ever be front-loaded?

A. I don't know what that means.

Q. In the sense that job specs or job announcement can be given to where only preselected people are going to qualify when the position is announced and the interviews are conducted by third parties?

...

Q. Well, let's say in this case. I've heard you talk about the process of a third party -- third party were involved?

A. Could it be engineered to meet --

Q. Could it be engineered, correct.

A. Is it possible?

Q. Yes.

A. *It's possible with the complicity of the associate commissioner and the commissioner.*

(Exhibit 111, Deposition of John Houston, p. 166, line 5 to p. 167, line 8) (emphasis added).

Based on the totality of the evidence set forth above, there is substantial evidence of a complicity and conspiracy to place Benson in the position of Assistant Personnel Manager and deny Plaintiffs on opportunity to compete for the position. The conspiracy was best summarized by Owens in her deposition:

Q. ... Tell me every fact you know that supports the allegation that there was a conspiracy between those people.

A. Well, to being with, it was kept a secret. And the announcement was written in such a way that it denied me the opportunity to apply.

Q. Go ahead.

A. And that the ones that wrote the announcement had privy to all the information, including the person that received the job that was at the same job classification as myself.

Q. All right. Go ahead.



- A. And I made it known that I wanted the job and wanted to apply and asked that the job specs - - the job - - minimum qualifications be changed to include the clause. And I was denied that by telling me that all jobs that were being paid at a higher rate, that they were going to leave it out of those specs. And until this very day, that has not been done, not with one job, just this one.

(Exhibit 106, Deposition of Joan Owens, p. 183, line 20 through p. 184, line 17).

In fact, Owens asked a very logical question regarding the secrecy of the position which Defendants have never answered. Owens testified:

- Q. Can you think of any good reason to keep it quiet?

- A. No, except to keep myself and Lynn from knowing about it.

...

- A. If you're wanting to fill a position and you need a real good person, why do you want to keep it quiet? You should want everybody in the world to know that a position is being looked at and get as many good applicants in there as you can get. It shouldn't be kept a secret.

(Exhibit 106, Deposition of Joan Owens, p. 186, line 11 through p. 187, line 2).

In addition to the reasons given by Owens for a conspiracy, Defendants acknowledge that the job was belatedly and pointlessly presented to the JEC for its consideration well after Commissioner Houston had already approved the job and its *Specification*. This evidence reflects a cover up.

The true objective of the Defendants' conspiracy was to "front-load" the employment process so that, even if interviews were fairly conducted, the preselected candidate - - Benson - - would prevail.

### CONCLUSION

There is substantial and overwhelming evidence of a conspiracy to create and design the job of Departmental Assistant Personnel Manager around Marilyn Benson, thereby pre-selecting her for the position and giving her a competitive advantage over all other candidates. Likewise, there is

overwhelming and substantial evidence that the Defendants conspired to deny the Plaintiffs the opportunity to apply and compete for the position of Departmental Assistant Personnel Manager by omitting the substitution clause from the *Specification*. Therefore, there is substantial evidence that the Defendants have conspired to violate the Plaintiffs' federally protected rights, and likewise have committed tortuous acts against the Plaintiffs for which the Defendants may be held civilly liable under Alabama law.

Respectfully submitted this the 28<sup>th</sup> day of July, 2008.

s/J. Flynn Mozingo  
J. Flynn Mozingo (MOZ003)  
Attorney for Plaintiffs  
Melton, Espy & Williams, P.C.  
P. O. Drawer 5130  
Montgomery, AL 36103-5130  
Telephone: (334) 263-6621  
Facsimile: (334) 263-7525  
[fmozingo@mewlegal.com](mailto:fmozingo@mewlegal.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have filed the foregoing electronically with Clerk of the Court using the ECF/CM system and a copy of the foregoing will be served on the below listed counsel of record via such system on this the 28<sup>th</sup> day of July, 2008:

H.E. NIX, JR.  
Nix, Holtsford, Gilliland,  
Higgins & Hitson, P.C.  
Post Office Box 4128  
Montgomery, AL 36103-4128

COURTNEY W. TARVER  
Deputy Atty. General and Gen. Counsel  
Bureau of Legal Services  
ADMH/MR  
RSA Union Building  
100 N. Union Street  
Montgomery, AL 36130

s/J. Flynn Mozingo  
OF COUNSEL

OTHA R. DILLIHAY, SR.  
210 Hamptons Grant Court  
Columbia, South Carolina 29209

Dillihay1@aol.com

(803) 446-7287

(803) 776-2651 (Home)

Cell (803) 446-7287  
Fax 803 776-2651

### CAREER PROFILE

Senior Executive with fifteen years of experience in the management and operations of government agencies and healthcare organizations. In-dept knowledge of budget development and management, governmental affairs, information technology, secured bond financing, facilities planning and construction. Strong commitment to community with a demonstrated record of voluntary community service.

### RECENT WORK EXPERIENCE

2000 to Present      **Director, Board of Directors Palmetto Health Alliance**  
Columbia, SC.

1999 to 2003      **Deputy Director for Administration**  
**South Carolina Department of Juvenile Justice**  
Columbia, South Carolina

Responsible for the efficient management and supervision of all Department of Juvenile Justice's administrative systems including: Budget, Finance, Medicaid Administration, Contracts, Grants Administration, Engineering Physical Plant and Support Services, Fiscal Affairs, Information Resource Technology, and Human Resources. Maintained an infrastructure to support staff in carrying out the mission, goals, and objectives of the agency and ensuring accountability for all division personnel, the agency's \$100 million budget and \$13 million Medicaid Program. Directed the agency's HIPAA compliance program and served as agency liaison with the State Budget and Control Board, the Governor's Office, and the South Carolina Legislature.

1994-1999      **Hospital Administrator**  
S.C. Department of Mental Health  
Columbia, South Carolina

Chief Operating Officer for a 288 bed acute psychiatric hospital (Wm. S. Hall Psychiatric Inst.) and a 166-bed medical/surgical hospital (Byrnes Medical Center). Supervised the directors of the following departments: Budget / Finance, Medicaid Administration, Health Information Services, Outpatient Clinics, Supply and Services, Safety/Risk Management, Computer Services, and Human Resources. Directed the hospitals' JCAHO, HIPAA and corporate compliance programs.

Plaintiffs' Exhibit  
2

ADMH 01-05-00057

Otha R. Dillihay, Sr.  
Page 2.

RECENT WORK EXPERIENCE (continued)

- 1993-1994      **Director Hospital Mortgage Insurance Staff**  
U.S. Department of Housing and Urban Development  
Washington, DC
- Directed a national bond insurance program for hospitals and other health care facilities, with a \$4.5 billion dollar portfolio. Bonds issued under this program enabled the construction or renovation for health care facilities in the U.S. and Puerto Rico.
- 1990-1993      **Business Manager / Chief Financial Officer**  
Crafts-Farrow State Hospital  
Columbia, South Carolina
- Managed the business activities for a 680 bed psychiatric and Alcohol /substance abuse hospital with a 60 bed intermediate care facility for mental retardation ICF/MR unit. The hospitals annual budget was \$35 million dollars.
- 1991            **Executive Assistant to the State Commissioner**  
South Carolina Department of Mental Health  
Columbia, South Carolina
- Managed the operations for the office of the State Commissioner. Advised the agency director and deputy directors on matters related to the management of the organization. Served as legislative liaison and directed special projects for the State Mental Health Commission.
- 1988-1989      **Project Coordinator / Director Continuity of Care**  
G. Werber Bryan Psychiatric Hospital  
Columbia, South Carolina
- Developed and coordinated the Continuity of Care Program for Bryan Hospital (a 266 bed acute psychiatric facility) and S.C. Mental. Health.

Otha R. Dillihay, Sr.  
Page 3.

**EDUCATION**

1990	Webster University, St. Louis, Missouri Masters Degree Business Administration.
1987-1988	South Carolina State University, Orangeburg, South Carolina Bachelor of Science Degree Business Administration.
1983-1985	University of South Carolina School of Law, Columbia, South Carolina.
1975-1979	Morehouse College, Atlanta, Georgia Economics.

**LEADERSHIP TRAINING**

2003	Leadership South Carolina University of South Carolina
2001	South Carolina Executive Institute S.C. Budget and Control Board
1992	Executive Leadership Institute, National Forum for Black Public Administrators

**BOARD SERVICE AND VOLUNTEER ACTIVITIES**

- Director, Board of Directors, Palmetto Health Alliance
- Trustee, Board of Trustees, Richland Memorial Hospital
- Director, Board of Directors, Hospital Services Industries Inc.
- Director, Board of Directors, South Carolina Cancer Center
- Major, South Carolina State Guard, HQ 1<sup>st</sup> Bal. 263rd Armor Division, First Brigade
- Vice President, Board of Directors South Carolina Executive Institute Alumni Association
- Director, Board of Directors South Carolina Deputy Directors Organization
- Chairman, Deacons Board, Ladson Presbyterian Church

**HONORS AND CERTIFICATIONS**

- Graduate, South Carolina Executive Institute
- Graduate, Executive Leadership Institute (Harvard University)
- Graduate, Leadership South Carolina (University of South Carolina)
- Graduate, Facility Design and Construction (U.S. Department of Justice)
- Graduate, Project Blueprint Leadership Forum (United Way of America)
- Honorable Order of Arkansas Travelers
- Honorable Order of Kentucky Colonels
- President, Hand Educational Foundation (1998-2000)
- Member, President's Cancer Panel, National Institute of Health (1994)
- Certified Rational Behavioral Therapist (1988)

State of Alabama  
Department of Mental Health and Mental Retardation

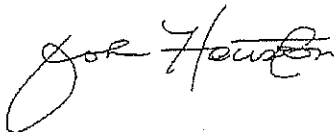
NUMBER: 60-20

SUBJECT: Personnel  
TITLE: Equal Employment Opportunity

EFFECTIVE: 4/4/88 REVIEWED: 8/7/2002 CHANGED: 1/19/07

RESPONSIBLE OFFICE: Division of Administration/Personnel

APPROVED:

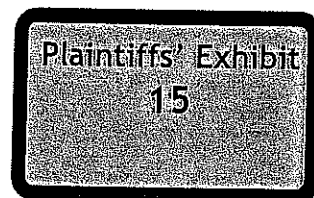


I. POLICY:

The Alabama Department of Mental Health/Mental Retardation will recruit, employ, promote, remunerate, and conduct all personnel administrative practices without regard to race, religion, national origin, color, age, gender, or disability, except where sex or physical ability constitute a bona fide occupational qualification.

II. STANDARDS:

1. The Department will maintain and implement an internal Affirmative Action Plan.



State of Alabama  
Department of Mental Health and Mental Retardation

NUMBER: 60-21

SUBJECT: Personnel/Payroll  
TITLE: Nepotism

EFFECTIVE: 9/13/96 REVIEWED: 10/19/2001 CHANGED: 8/31/06

RESPONSIBLE OFFICE: Personnel

APPROVED: \_\_\_\_\_

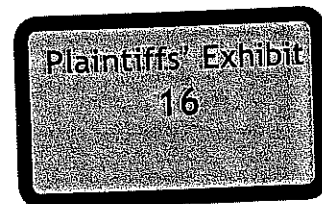
*Joe Houser*

**I. POLICY:**

Employees of the Department of Mental Health and Mental Retardation will not be subjected to any form of discrimination or favoritism.

**II. STANDARDS:**

1. Designated appointing authorities of the Department of Mental Health/Mental Retardation shall not appoint any person related to him/her within the 4<sup>th</sup> degree of affinity or consanguinity (i.e. spouse, children, mother, father, sister, brother, grandparents, legal guardian, in-laws, and other relatives through the degree of 4<sup>th</sup> cousin) to serve in any position under his/her direct supervision.
2. Other management level staff shall not directly supervise a relative or any person within the 4<sup>th</sup> degree of affinity or consanguinity as listed above.





# **Departmental Assistant Personnel Manager**

**Job Code: H5500**

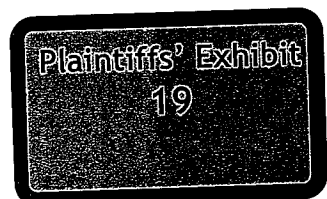
**Range: 80**

**Definition:**

This is highly responsible professional personnel management work at the Central Office Division of Human Resources for the Department of Mental Health Retardation. An employee in this class is responsible for assisting in the day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program. Supervision may be exercised over clerical and para-professional staff performing specialized assignments. Work is assigned with general guidelines and objectives by an Administrative Supervisor or the Director of Human Resources who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results. An employee in this classification serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions, and serves on various committees and task forces as assigned.

**Examples of Work Performed:**

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action.
- Maintains on-going classification and pay information from governmental agencies and the private sector
- Consults with Director of Human Resources, other department heads, administrators, supervisors, and employees on rules, regulations, and provides recommendations concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals
- Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings
- Gathers information and prepares budget for Central Office Personnel Division and monitors expenditures



- Coordinates various supervisory training for departmental Personnel Officers and make oral presentations as needed
- Supervises clerical and para-professional staff and conducts annual performance evaluations.

**Knowledge, Skills, and Abilities:**

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Knowledge of State personnel rules and policies governing public agencies
- Knowledge of principles and practices of public personnel administration, regarding applicable rules, regulations, policies
- Thorough knowledge of interviewing techniques
- Ability to advise and make recommendations regarding employment selection procedures
- Ability to conduct and coordinate meetings and chair committees
- Ability to research grants and funding sources
- Ability to interpret state and federal rules and regulations
- Ability to communicate and convey ideas in an effective manner both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.
- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the general public

**Qualifications:**

Graduation from a four-year college or university with a Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. Extensive experience (72 months or more) in professional personnel management, plus experience (24 months or more) in a supervisory capacity.

1/05

ADMH 02-00003

BOB RILEY  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATION  
RSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410

JOHN HOUSTON  
ACTING COMMISSIONER

March 15, 2005

MEMORANDUM

TO: Personnel Officers

FROM: Henry E. Ervin

SUBJECT: Exempt Classification & Pay Plan  
Distribution #74

Listed below are actions taken by the Commissioner affecting the Exempt Classification Pay Plan.

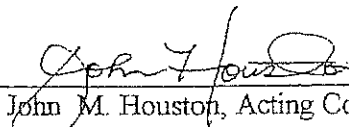
I. SUBSTITUTION OF EXPERIENCE FOR DEGREE

<u>Name</u>	<u>Facility</u>	<u>From</u>	<u>To</u>
Jim Elliott	Bryce	Personnel Spec. III (75)	Personnel Mgr. III (82)
Sandranetta Hanks	Partlow	Hab. Treat. Spec. (63)	Hab. Treat. Coord. II (72)
Teresa Harris	Partlow	Hab. Treat. Spec. (63)	Hab. Treat. Coord. II (72)

New Employee

Letitia Hendricks	Griel	Personnel Manager I (75)
-------------------	-------	--------------------------

Approved:

  
 John M. Houston, Acting Commissioner

Date:

3-17-05

HEE/mbb

 Plaintiffs Exhibit  
 23

ADMH 02-00180

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
July 22, 2005

Members Present: Henry Ervin  
Kent Hunt  
John Zeigler  
Judith Johnston  
Eranell Wilson  
June Lynn  
Also Attending: Kathleen Brantley

Members Absent: Otha Dillihay  
Paul Bisbee

Committee chairman began the meeting by noting this was the first meeting since the committee has been charged with additional responsibilities of reviewing all positions announced since the implementation of new hiring guidelines.

The first item to be considered was a substitution of experience on Kathy Cason (Rec. Activity Specialist I – North Ala. Regional). There was also an additional request to hire Ms. Cason beyond the minimum steps allowed. It was noted that the Committee does not have that responsibility; it is done solely at the approval of the Commissioner.

The second item: Review of the revised job specifications for the Community Service Specialist series. Old and new specs were handed out for Committee members to compare. It was noted that no change in salary range recommendations were made on the CSS I and CSS II series, however the new qualifications for the CSS III now allow a bachelor's level individual to qualify with experience. Recommendations were made to increase the ranges for the CSS III from range 72 to 74, the CSS IV from range 77 to 78 and the CSS V from 80 to 82. These recommendations were made based upon when funding becomes available. A motion was made to approve the specs as revised. Another motion was made to approve the pay ranges when funding is available. Both motions were seconded and approved. It was also noted that if anyone is hired in the interim, they would be hired at the current pay range.

There was discussion about whether or not a financial analysis had been done before making the proposed salary range increases. It was noted that because these positions are so unique, there are no positions in which to make a comparison.

Plaintiffs' Exhibit  
27

Commissioner Houston addressed the group and thanked everyone for their willingness to accept the added responsibility of reviewing all the new positions under the new hiring guidelines. He mentioned two positions that he would like to fill, Fiscal Mgr. IV, and Administrator VII, but he stated that he did not have any intentions of acting on either one of them in the immediate future. He really wanted to get input from the Committee as to what their recommendations would be regarding both positions.

There was discussion about filling any new positions until the beginning of the fiscal year. Eranell Wilson recommended that there be no additions to the already existing deficit.

**Each Committee member was given a list of positions to be considered. Requests were reviewed by facility, starting with Bryce:**  
All Bryce requests were approved with the exception of the Plant Maintenance Worker. The committee voted and approved to hold this position until the next meeting.

There was discussion about many security officers getting their certifications and leaving the department as soon as they are certified. It was suggested that we come up with a policy that would require them to stay a certain length of time before they were able to transfer somewhere else.

Judith recommended that the facilities provide more detailed information when submitting letters of justification for their positions. She volunteered to work on outlining more specific details which would be useful in helping the committee. It was also noted that it might be necessary to get the facility director on the phone during the actual meetings to answer additional questions that the committee may have regarding the need to replace their positions, particularly if they have been vacant for some time.

**The request from Griel for a MH Security Officer I was withdrawn from consideration.**

**North Alabama Regional's request for a Plant Maintenance Worker was approved.**

**Partlow's requests were all approved.**

Searcy's requests were all approved with the exception of (2) ASA I's, Material Manager II, and (2) Staff Development Specialist I's that were put on hold. There was discussion regarding the Staff Development Specialist positions, and the Staff Dev. Spec. IV was approved.

Taylor Hardin Secure Medical's positions were all approved with the exception of (2) Security Officer positions: (Don Fowler & Roy Swartz).

Central Office positions were all approved. There was discussion regarding the Fiscal Manager IV (Budget Officer), the Administrator VII, and the Assistant Dept.

**Personnel Manager positions.** There was discussion about announcing the Assistant Dept. Personnel Manager position until the beginning of the fiscal year. Due to the nature of these positions, there was concern about how facilities would perceive announcing new positions at a time when new hiring restrictions are being imposed.

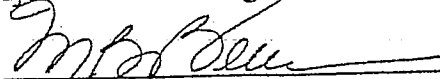
A motion was made and a vote was taken to approve announcing the positions. The discretion on when to announce the Fiscal Mgr. IV and Administrator VII would be left up to the Commissioner. It was voted to delay announcing the Asst. Dept. Personnel Director until the beginning of the fiscal year.

There was discussion about the Contract Office position (Accounting Assistant). Kathleen expressed her concern about whether an individual in this position would be qualified to do fiscal inventory.

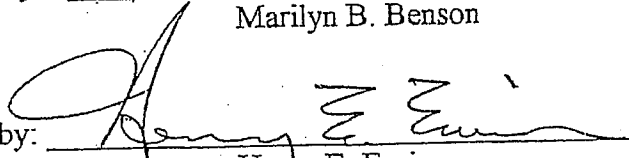
**There were 12 new positions in Substance Abuse to be considered.** Kent mentioned that his entire office was being restructured. Some of the current staff would be able to qualify for the newly created positions. If the individuals were selected to fill the positions, their old positions would be abolished. After lengthy discussion, all the positions were approved.

There was a motion to adjourn until the August meeting.

Minutes submitted by:

  
Marilyn B. Benson

Minutes approved by:

  
Henry E. Ervin



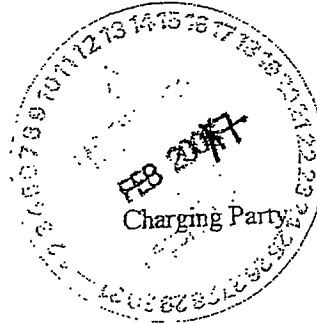


U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Birmingham District Office

Ridge Park Place  
1130 22<sup>nd</sup> Street, Suite 2000  
Birmingham, AL 35205  
(205) 212-2100  
TTY (205) 212-2112  
FAX (205) 212-2105

EEOC Charge Number: 420-2006-01138

Karen Hubbard  
2534 Poplar Street  
Montgomery, AL 36107



v.

Dept. of Mental Health and Mental Retardation  
P.O. Box 301410  
Montgomery, AL 36130-1410

Respondent

Plaintiffs' Exhibit  
37

DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. 2000e, et. seq. (Title VII). Timeliness and all other requirements for coverage have been met.

Charging Party alleges that she was denied the opportunity to apply for a promotion to the position of Departmental Assistant Personnel Director because of her race, White. Charging Party alleges that Respondent omitted a substitution clause from the job announcement for the position in order to preclude her from meeting the qualifications and favor the Black applicant. Respondent denies that Charging Party has been a victim of discrimination and contends that it now omits the substitution clause from all high level positions.

The investigation revealed that Respondent has not instituted a policy of omitting substitution clauses from all high level positions. Evidence showed that many such positions were announced after the Departmental Assistant Personnel Manager position, but they included substitution clauses. Evidence showed that the omission favored the Black Personnel Specialist III, but it served to exclude Charging Party and the other Personnel Specialist III, who is White, from applying. Evidence shows that Charging Party expressed interest in the job but the job announcement was not changed. The evidence obtained during the investigation establishes reasonable cause to believe a violation of the statute has occurred.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Please complete the enclosed Invitation to Conciliate and return it to the Commission at the above address no later than 02/23/2007. You may fax your response directly to (205) 212-2105 to the attention of Sheri Guenster. Failure to respond by 02/23/2007 will indicate that you are not interested in conciliating this matter and the Commission will determine that efforts to conciliate this charge as required by Title VII, Section 706(b), have been unsuccessful.

If Respondent declines to participate in conciliation discussions or when, for any other reason, a Conciliation Agreement acceptable to the District Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the

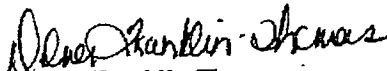
ADMH 05-00001

Letter of Determination  
420-2006-01138  
Page 2 of 2

Commission.

On behalf of the Commission,

02/08/2007  
Date

  
Delner Franklin-Thomas  
District Director

Enclosure: Invitation to Conciliate

Copy: Mr. Courtney W. Tarver  
Deputy Attorney General and Counsel



STATE OF ALABAMA

DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATIONRSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410JOHN M. HOUSTON  
COMMISSIONERBOB RILEY  
GOVERNOR(EXTENDED DEADLINE)  
RE-ANNOUNCEMENT OF INTENT TO FILL A NON-MERIT POSITION  
EQUAL OPPORTUNITY EMPLOYER

**JOB TITLE:** Departmental Assistant  
Personnel Manager **NUMBER:** 05-27

**JOB CODE:** H5500 **DATE:** 9/15/05

**SALARY RANGE:** 80 (\$46,820- \$71,380) **POS#:** 8813339

**JOB LOCATION:** Department of Mental Health  
And Mental Retardation  
100 North Union Street  
Montgomery, Ala. 36130

**QUALIFICATIONS:** Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. **Extensive experience (72 months or more)** working in a professional personnel management position, plus experience (24 months or more) in a supervisory capacity.

*Preference will be given to individuals with:*

- *Master's degree in any of the above specified fields of study.*
- *Work experience in the governmental/ public sector*
- *Work experience in a healthcare setting*

**KIND OF WORK:** Assists with day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program for the Department of Mental Health and Mental Retardation. Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action. Research and identify grant funding sources to assist coordinating efforts regarding Wage and Classification Studies. Maintains on-going classification and pay information from governmental agencies and private sector. Advises Director of Human Resources and assists in making recommendations to department heads, administrators, supervisors, and employees on rules, regulations, and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals. Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings. Gathers information and prepares budget for the Central Office Personnel Division and monitors expenditures. Coordinates various supervisory training for departmental Personnel Officers and makes oral presentations as needed.

Plaintiffs' Exhibit  
42

ADMH 02-00157

Departmental Assistant  
Personnel Manager  
#05-27  
Page 2

Serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions and serves on various committees and task forces as assigned. Supervises clerical and para-professional staff assigned to Human Resources and conducts performance evaluations.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:** Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations. Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development. Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and ability to interpret state and federal rules and regulations. Ability to plan, organize, direct, and evaluate the work of others. Thorough knowledge of interviewing techniques. Ability to advise and make recommendations regarding employment selection procedures. Ability to make presentations and convey ideas and opinions effectively, both orally and in writing. Ability to gather, correlate, and analyze facts, and recommend solutions. Ability to provide technical assistance in the area of expertise. Ability to research and identify grants and funding resources. Ability to conduct and coordinate various meetings and chair committees. Ability to establish and maintain effective working relationships with departmental personnel at all levels and with employees in other departments as well as the general public.

**METHOD OF SELECTION:** Applicants will be rated on the basis of an evaluation of their training, experience and education, and should provide adequate work history identifying experiences related to the duties and minimum qualifications mentioned above. All relevant information is subject to verification.

**HOW TO APPLY:** Use an official application for Professional Employment (Exempt Application), which may be obtained from this office, other Department of Mental Health and Mental Retardation facility Personnel Offices, or at [www.mh.state.al.us](http://www.mh.state.al.us). **Only work experience detailed on the application form will be considered.** Additional sheets, if needed, should be in the same format as the application. **Resumes will not be accepted in lieu of an official application.**

**ALL APPLICATIONS SHOULD BE RETURNED TO:**

W.D. Partlow Developmental Center  
Attention: Mr. Mike Mathis (Personnel Director)  
1700 University Blvd.  
Tuscaloosa, Ala. 35406-1730

**DEADLINE FOR SUBMITTING APPLICATIONS:** October 28, 2005.

COPIES of licenses/certifications if applicable should be forwarded/furnished during interview, an official copy of your academic transcripts must be forwarded by the college or university to the personnel office at the above address.

# **Departmental Assistant Personnel Manager**

*Job Code: H5500*

*Range: 80*

## **Definition:**

This is highly responsible professional personnel management work at the Central Office Division of Human Resources for the Department of Mental Health Retardation. An employee in this class is responsible for assisting in the day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program. Supervision may be exercised over clerical and para-professional staff performing specialized assignments. Work is assigned with general guidelines and objectives by an Administrative Supervisor or the Director of Human Resources who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results. An employee in this classification serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions, and serves on various committees and task forces as assigned.

## **Examples of Work Performed:**

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action.
- Maintains on-going classification and pay information from governmental agencies and the private sector
- Consults with Director of Human Resources, other department heads, administrators, supervisors, and employees on rules, regulations, and provides recommendations concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals
- Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings
- Gathers information and prepares budget for Central Office Personnel Division and monitors expenditures



- Coordinates various supervisory training for departmental Personnel Officers and make oral presentations as needed
- Supervises clerical and para-professional staff and conducts annual performance evaluations.

**Knowledge, Skills, and Abilities:**

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Knowledge of State personnel rules and policies governing public agencies
- Knowledge of principles and practices of public personnel administration, regarding applicable rules, regulations, policies
- Thorough knowledge of interviewing techniques
- Ability to advise and make recommendations regarding employment selection procedures
- Ability to conduct and coordinate meetings and chair committees
- Ability to research grants and funding sources
- Ability to interpret state and federal rules and regulations
- Ability to communicate and convey ideas in an effective manner both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.
- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the general public

**Qualifications:**

Graduation from a four-year college or university with a Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. Extensive experience (72 months or more) in professional personnel management, plus experience (24 months or more) in a supervisory capacity.

BOB RILEY  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATION  
RSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410

JOHN HOUSTON  
COMMISSIONER

**ANNOUNCEMENT OF INTENT TO FILL A NON-MERIT POSITION  
EQUAL OPPORTUNITY EMPLOYER**

**JOB TITLE:** Departmental Assistant  
Personnel Manager **NUMBER:** 05-27

**JOB CODE:** H5500 **DATE:** 9/15/05

**SALARY RANGE:** 80 (\$46,820- \$71,380) **POS#:** 8813339

**JOB LOCATION:** Department of Mental Health  
And Mental Retardation  
100 North Union Street  
Montgomery, Ala. 36130

**QUALIFICATIONS:** Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. **Extensive experience (72 months or more)** working in a professional personnel management position, plus experience (24 months or more) in a supervisory capacity.

*Preference will be given to individuals with:*

- *Master's degree in any of the above specified fields of study.*
- *Work experience in the governmental/ public sector*
- *Work experience in a healthcare setting*

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ADMH 04-00004



Departmental Assistant  
Personnel Manager  
#05-27  
Page 2

Serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions and serves on various committees and task forces as assigned. Supervises clerical and para-professional staff assigned to Human Resources and conducts performance evaluations.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:** Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations. Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development. Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and ability to interpret state and federal rules and regulations. Ability to plan, organize, direct, and evaluate the work of others. Thorough knowledge of interviewing techniques. Ability to advise and make recommendations regarding employment selection procedures. Ability to make presentations and convey ideas and opinions effectively, both orally and in writing. Ability to gather, correlate, and analyze facts, and recommend solutions. Ability to provide technical assistance in the area of expertise. Ability to research and identify grants and funding resources. Ability to conduct and coordinate various meetings and chair committees. Ability to establish and maintain effective working relationships with departmental personnel at all levels and with employees in other departments as well as the general public.

**METHOD OF SELECTION:** Applicants will be rated on the basis of an evaluation of their training, experience and education, and should provide adequate work history identifying experiences related to the duties and minimum qualifications mentioned above. All relevant information is subject to verification.

**HOW TO APPLY:** Use an official application for Professional Employment (Exempt Application), which may be obtained from this office, other Department of Mental Health and Mental Retardation facility Personnel Offices, or at [www.mh.state.al.us](http://www.mh.state.al.us). **Only work experience detailed on the application form will be considered.** Additional sheets, if needed, should be in the same format as the application. **Resumes will not be accepted in lieu of an official application.**

**ALL APPLICATIONS SHOULD BE RETURNED TO:**

W.D. Partlow Developmental Center  
Attention: Mr. Mike Mathis (Personnel Director)  
1700 University Blvd.  
Tuscaloosa, Ala. 35406-1730

**DEADLINE FOR SUBMITTING APPLICATIONS:** September 30, 2005.

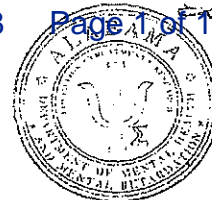
COPIES of licenses/certifications if applicable should be forwarded/furnished during interview, an official copy of your academic transcripts must be forwarded by the college or university to the personnel office at the above address.



BOB RILEY  
GOVERNOR

DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATION

RSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410



KATHY E SAWYER  
COMMISSIONER

February 3, 2005

MEMORANDUM

TO: Ms. Jackie Graham  
Deputy Director of State Personnel

FROM: Henry E. Ervin *HEE*  
Director/ Human Resource Management  
DMH/MR

RE: Establishing Exempt Positions

We are hereby requesting to establish job codes for the following new exempt positions at the ranges as indicated below:

<u>Title</u>	<u>Job Code</u>	<u>Range</u>	<u>PCO#</u>
Health Facilities Manager	A3300	80	8813338
Departmental Assistant Personnel Manager	H5500	80	8813339

Thank you for your assistance in helping us expedite this request.

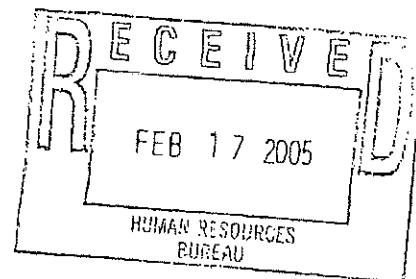
HEE/mbb

Accepted:

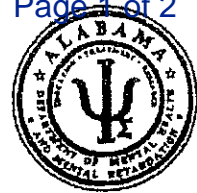
*Jackie Graham*

Jackie Graham, Deputy Director State Personnel

Date: \_\_\_\_\_




ADMH 02-00001

BOB RILEY  
GOVERNORSTATE OF ALABAMA  
DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATIONRSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410JOHN HOUSTON  
COMMISSIONER

June 14, 2005

MEMORANDUM

TO: John M. Houston  
DMH/MR Acting Commissioner

FROM: Henry E. Ervin   
Director of Human Resources

RE: Dept. Asst. Personnel Manager

Due to recent Consolidation and Closure of DMH/MR facilities, it has become necessary to re-assess overall personnel management functions and devote more energy in developing meaningful HR management programs that positively affect and enhance morale and career development among the departments approximately 3000 employees. As you are aware, Central Office Personnel has expanded its area of responsibility in that we are now responsible for managing all personnel records and all employee transactions for Community Service Employees. In addition, newly created positions (MH Specialists) with the Substance Abuse Division and (Interpreters) with the Deaf Services Division now fall under the HR Management Bureau.

In order to better align classifications that reflect actual duties and responsibilities with appropriate salary ranges, it is being recommended that a Wage and Classification Study be conducted for FY '05. The current antiquated structure has been in place for the past twenty years and has far out lived it's ability to provide the necessary equity and consistency that our pay and classification system needs. This is also an opportunity for us to completely over-haul existing class specifications.

In addition, we will be investigating the possibility of utilizing grant funding, whether federal or other alternative sources to assist us in this effort. It is for these reasons, it is being proposed that a Departmental Assistant Personnel Manager (Range 80) be created. This individual will be fully involved with the Wage and Classification Study, and assist



ADMH 02-00162



with the development of a work-force succession plan to address the issues of a projected 30% of the workforce who will be eligible to retire within the next two to three years. This position will also provide direct supervision to all HR office clerical and paraprofessional staff while assisting the Director with the day to day operations and management of other ensuing HR projects. We also feel that the creation of this position will help to facilitate a more hands on approach and foster greater interaction amongst facility directors and personnel managers.

We appreciate your immediate attention in helping us expedite this request. Let us know if you have additional questions or concerns.

HEE/

cc: Otha Dillihay  
Assoc. Commissioner/Administration


ALABAMA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION  
REQUEST TO FILL EXEMPT POSITION ON STAFFING PLAN

Administration Division Name	Personnel - 4065 Section Code	Dept. Asst. Personnel Manager H5500 Class Title & Code
Employment Type	(X) Permanent ( ) Conditional	( ) Temporary ( ) Part-time Permanent ( ) Part-time Temporary
PCQ#	Previous Incumbent, If Any	Reasons For Leaving Date Left
8813339	New Position	

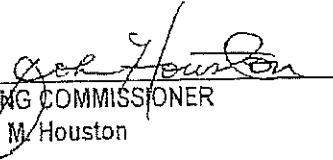
Remarks:

N/A

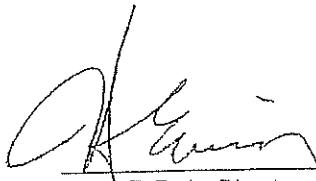
DATE

  
ASSOCIATE COMMISSIONER  
Otha R. Dillihay

DATE

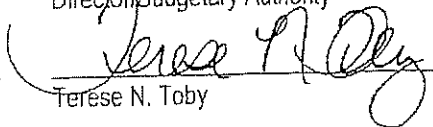
  
ACTING COMMISSIONER  
John M. Houston

DATE

  
Henry E. Ervin, Director  
Human Resource Management

Date

Position was included on the EB09  
As approved by the State Finance  
Director/Budgetary Authority

  
Terese N. Toby

Date

Plaintiffs' Exhibit  
51

**ANNOUNCEMENT OF INTENT TO FILL A NON-MERIT POSITION  
EQUAL OPPORTUNITY EMPLOYER**

**JOB TITLE:** Departmental Assistant  
Personnel Manager **NUMBER:** 05-27

**JOB CODE:** H5500 **DATE:** 5/27/05

**SALARY RANGE:** 80 (\$44,171- \$67,340) **POS#:** 8813339

**JOB LOCATION:** Department of Mental Health  
And Mental Retardation  
100 North Union Street  
Montgomery, Ala. 36130

**QUALIFICATIONS:** Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. **Extensive experience (72 months or more)** in professional personnel management plus experience (24 months) in supervision.

*Preference will be given to individuals with:*

- *Master's degree in any of the above specified fields of study.*
- *Work experience in the public sector*

**KIND OF WORK:** Assists with day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program for the Department of Mental Health and Mental Retardation. Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action. Research and identify grant funding sources to assist coordinating efforts regarding Wage and Classification Studies. Maintains on-going classification and pay information from governmental agencies and private sector. Advises Director of Human Resources and assists in making recommendations to department heads, administrators, supervisors, and employees on rules, regulations, and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals. Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings. Gathers information and prepares budget for the Central Office Personnel Division and monitors expenditures. Coordinates various supervisory training for departmental Personnel Officers and makes oral presentations as needed.

Departmental Assistant

Plaintiffs' Exhibit  
52

ADMH 04-00006

Personnel Manager  
#05-27  
Page 2

Serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions and serves on various committees and task forces as assigned. Supervises professional and non-professional staff assigned to Human Resources and conducts performance evaluations.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:** Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations. Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development. Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and ability to interpret state and federal legislation. Ability to plan, organize, direct, and evaluate the work of others. Thorough knowledge of interviewing and counseling techniques. Ability to make presentations and convey ideas and opinions effectively, both orally and in writing. Ability to gather, correlate, and analyze facts, and recommend solutions. Ability to provide technical assistance in the area of expertise. Ability to research and identify funding resources. Ability to conduct and coordinate various meetings and chair committees. Ability to establish and maintain effective working relationships with departmental personnel at all levels and with employees in other departments as well as the general public.

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The application should be returned to *Central Office Personnel: Alabama Department of Mental Health & Mental Retardation P.O. Box 301410, 100 North Union Street, Montgomery, Ala. 36130-1410, JUNE 24, 2005* in order to be considered for this position. **COPIES** of licenses/certifications if applicable should be forwarded/furnished during interview, an official copy of your academic transcripts must be forwarded by the college or university to the personnel office at the above address.

Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

Number of Steps
--------------------

Employee Name: MARILYN B BENSON Social Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E-CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST III Class Code: H3000Period Covered From: 04/01/1998 To: 04/01/1999 Annual Raise Effective: JUNE 1999**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN 418 - 60 - 6205SSN 424 - 62 - 1419Signature [Signature]Signature [Signature]Signature [Signature]Date 4-6-99Date 4/6/99Date 4-7-99

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.28.0  
Responsibility  
Score0  
Disciplinary  
Score

=

28.00  
Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

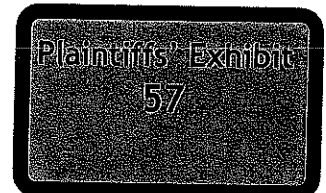
Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

**Responsibility****Rating**

- |  |   |
|--|---|
| 1. Maintain exempt classification and pay structure . . .            | <div style="border: 1px solid black; padding: 2px;">3</div> |
| 2. Provide technical support to the Job Evaluation Committee . . .   | <div style="border: 1px solid black; padding: 2px;">3</div> |
| 3. Coordinate wage and salary information for nonmerit classes . . . | <div style="border: 1px solid black; padding: 2px;">3</div> |
| 4. Conduct job audits on nonmerit classifications . . .              | <div style="border: 1px solid black; padding: 2px;">3</div> |
| 5. Complete other personnel/administrative functions . . .           | <div style="border: 1px solid black; padding: 2px;">2</div> |
| 6. _____   | <div style="border: 1px solid black; padding: 2px;"></div>  |
| 7. _____   | <div style="border: 1px solid black; padding: 2px;"></div>  |
| 8. _____   | <div style="border: 1px solid black; padding: 2px;"></div>  |
| 9. _____   | <div style="border: 1px solid black; padding: 2px;"></div>  |
| 10. _____  | <div style="border: 1px solid black; padding: 2px;"></div>  |

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{14} & \div & \underline{5} & = & \underline{2.80} & \times & 10 = \underline{28} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE:

0

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

Number of Steps
--------------------

Employee Name: MARILYN B BENSON Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL GPP ADMIN

Classification: PERSONNEL SPECIALIST III Class Code: H3000

Period Covered From: 04/01/1998 To: 04/01/1999 Annual Raise Effective: JUNE 1999

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor	Employee	Reviewing Supervisor
SSN <u>418 60 6205</u>		SSN <u>424 62 1419</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>
Signature <u>4-6-99</u>	Signature <u>4/6/99</u>	Signature <u>4-7-99</u>
Date	Date	Date
Initial if comments are attached	Initial if comments are attached	Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

280 - 0 = 28.00

Responsibility Score      Disciplinary Score      Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ADMH 01-03-00068



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1. Maintain exempt classification and pay structure . . .					3
2. Provide technical support to the Job Evaluation Committee . . .					3
3. Coordinate wage and salary information for nonmerit classes . . .					3
4. Conduct job audits on nonmerit classifications . . .					3
5. Complete other personnel/administrative functions . . .					2
6. _____					
7. _____					
8. _____					
9. _____					
10. _____					

**RESPONSIBILITY SCORE:**

$$\frac{14}{5} \div \frac{5}{5} = \frac{2.80}{2.80} \times 10 = 28$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0



Form 13  
Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**

☐ Number  
of Steps

Employee Name: MARILYN B BENSON Social Security Number: [REDACTED]  
Agency: DAI/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 04/01/1999 To: 04/01/2000 Annual Raise Effective: JUNE 2000

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

**Rating Supervisor**

**Employee**

**Reviewing Supervisor**

SSN 418-60-6205  
[Signature]  
Signature  
4-3-00  
Date

[Signature]  
Signature  
4/5/00  
Date

SSN 428-96-1200  
[Signature]  
Signature  
4-3-00  
Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

3.00 -                      = 30.00  
Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Case 2:07-cv-00650-WHA-JFM Document 52-16 Filed 07/28/2008 Page 6 of 16

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1. Maintain exempt classification and pay structure...					3
2. Provide technical support to the Job Evaluation Committee...					3
3. Coordinate wage and salary information for nonmerit classes...					2
4. Conduct job audits on nonmerit classification...					3
5. Complete other personnel/administration functions...					2
6. Coordinate the Department's exempt selection process.....					3
7. Coordinate the Department's Recruitment efforts.....					3
8. _____					
9. _____					
10. _____					

**RESPONSIBILITY SCORE:**

<u>21</u>	÷	<u>7</u>	=	<u>3.00</u>	x	10	=	<u>30.00</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

7	Number of Steps
---	--------------------

Employee Name: MARILYN B BENSON Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN

Classification: PERSONNEL SPECIALIST III Class Code: H3000

Period Covered From: 04/01/2000 To: 04/01/2001 Annual Raise Effective: JUNE 2001

APPRAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN 418-160-6205SSN 428-96-8200

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

2.71Responsibility  
Score0Disciplinary  
Score

=

27.01Performance Appraisal  
Score

This employee's work:

Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance



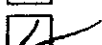
Punctuality



Cooperation with Coworkers



Compliance with Rules



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. Coordinate the Department's exempt selection process . . . .	<u>4</u>
2. Coordinate facility job announcements . . . .	<u>3</u>
3. Coordinate Wage and Salary information . . . .	<u>2</u>
4. Provide technical assistance to the Job Evaluation Committee . . . .	<u>3</u>
5. Conduct job audits . . . .	<u>2</u>
6. Assist with departmental recruitment efforts . . . .	<u>2</u>
7. Complete other personnel/administrative functions . . . .	<u>3</u>
8. _____	<u>  </u>
9. _____	<u>  </u>
10. _____	<u>  </u>

**RESPONSIBILITY SCORE:**

$$\frac{19}{\text{Total of Responsibilities/Results Ratings}} \div \frac{7}{\text{Number of Responsibilities}} = \frac{2.71}{\text{Average Responsibility Rating}} \times 10 = \frac{27.1}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

**DISCIPLINARY SCORE:**   0

Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**

Number  
of Steps

Employee Name: MARILYN B BENSONSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 04/01/2001To: 04/01/2002Annual Raise Effective: JUNE 2002

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN [REDACTED]SSN [REDACTED] 8200Signature Henry E. Ervin, DirectorSignature Marilyn Benson, PS IIISignature Dr. Ross Bart, Assoc. CommDate 4-11-02Date 4-11-02Date 4-10-02

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

32.9Responsibility  
Score0Disciplinary  
Score

=

32.9Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented & discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0  
Does Not Meet  
Standards

1  
Partially Meets  
Standards

2  
Meets  
Standards

3  
Exceeds  
Standards

4  
Consistently Exceeds  
Standards

Responsibility	Rating
1. Coordinate the Department's exempt selection process...	4
2. Coordinate facility job announcements...	3
3. Coordinate Wage and Salary information...	3
4. Provide technical assistance to the Job Evaluation Committee...	3
5. Conduct job audits...	3
6. Assist with departmental recruitment efforts...	3
7. Complete other personnel/administrative functions...	4
8. _____	
9. _____	
10. _____	

**RESPONSIBILITY SCORE:**

$$\frac{23}{\text{Total of Responsibilities/Results Ratings}} \div \frac{7}{\text{Number of Responsibilities}} = \frac{3.285}{\text{Average Responsibility Rating}} \times 10 = \frac{32.9}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

None

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0



Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL****STATE OF ALABAMA****Personnel Department**
☐ Number  
of Steps
Employee Name: MARILYN B BENSONSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF. ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 04/01/2003 To: 04/01/2004Annual Raise Effective: JUNE 2004**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN 418 - 60 - 6205SSN 418 - 74 - 6746Signature [Signature]Signature [Signature]Signature [Signature]Date 4-1-04Date 4/1/04Date 4/1/04

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

35.71  
Responsibility  
Score

-0-  
Disciplinary  
Score

35.7  
Performance Appraisal  
Score

This employee's work:

☐

Does Not Meet  
Standards  
(6.6 or below)

☐

Partially Meets  
Standards  
(6.7 - 16.6)

☐

Meets  
Standards  
(16.7 - 26.6)

☒

Exceeds  
Standards  
(26.7 - 36.6)

☐

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

4-16-04

ADMH 01-03-00051

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box next to each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. Maintains Exempt Classifications and pay structure....	4
2. Provide technical support to the Job Evaluation Committee....	4
3. Coordinate wage and salary information for non-merit classes....	3
4. Conducts job audits on non-merit classifications....	3
5. Provide supervision for two Personnel Assistant II's and an ASA I....	3
6. Completes other Personnel/Administrative assignments in addition to regular job....	4
7. Serves as Acting Director of Human Resources during the absence of the Director....	4
8. _____	<input type="text"/>
9. _____	<input type="text"/>
10. _____	<input type="text"/>

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{25} & \div & \underline{7} & = & \underline{3.571} & \times & 10 & = & \underline{35.7} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

NONE

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: -0-



Form 13  
Revised (1/1/1999)**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**☐ Number  
of StepsEmployee Name: KARILYN B BENSONSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 04/01/2002 To: 04/01/2003Annual Raise Effective: JUNE 2003**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN: 418 - 60 - 6205SSN: 418 - 74 - 6746Signature [Signature]Signature [Signature]Signature [Signature]Date 4-4-03Date 4/4/03Date 4/4/03

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.3.428  
Responsibility  
Score0  
Disciplinary  
Score3.428 3 JB  
Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

RESPONSIBILITIES: Case 2:07-cv-00559-WHA-TFM Document 52-16 Filed 07/28/2008 Page 14 of 16  
 Case 2:07-cv-00559-WHA-TFM Document 52-16 Filed 07/28/2008 Page 14 of 16  
 discussed during the Preappraisal record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. Maintains exempt classifications and pay structure	4
2. Provide technical support to the Job Evaluation Committee	4
3. Coordinate wage and salary information for non-merit classes	3
4. Conducts job audits on non-merit classification	3
5. Provide supervision for Personnel Assistants I/II & ASA II	3
6. Completes other personnel/administrative functions	4
7. Serves as Acting Director during the absence of the Director of Human Resources	3
8.	
9.	
10.	

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{24} & \div & \underline{7} & = & \underline{3.428} & \times & 10 = \underline{34.28} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

None

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

ALABAMA DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION  
 EMPLOYEE WORKING TEST PERIOD  
 Exempt & Form 8 Employees

10-98R

Employee Name: MARILYN B BENSON Social Security Number: XXX-XX-XXXX  
 Agency: 061/MENTAL HEALTH/RETARDATION Division: 404E/CENTRAL OFFICE ADMIN  
 Classification: ASST DEPT PERSONNEL DIR Class Code: H5500  
 Period Covered From: 03/04/2006 To: 09/03/2006 Position Number: 8813339

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

SSN: [REDACTED] Signature: Henry E. Eason Date/Initial if comments are attached: \_\_\_\_\_  
 Rating Supervisor  
 SSN: [REDACTED] Signature: Marilyn B Benson Date/Initial if comments are attached: \_\_\_\_\_  
 Reviewing Supervisor  
 Signature: John Houston Date/Initial if comments are attached: \_\_\_\_\_

It is recommended that:

- ☐ Employee be continued in working test period in position named (state reason in Disciplinary Actions area).  
☒ Employee's working test period be ended. No status granted for non-merit employees (exempt or Form 8).  
☒ Increase to \$2,687.60 Step 12 is recommended effective 9-16-06.  
☐ Employee be terminated before the end of the working test period (state reason in Disciplinary Actions area).

Signed: John Houston Date: 8-21-06

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

33.00 - 0 = 33.00  
 Responsibility Score Disciplinary Score Performance Appraisal Score

**THIS EMPLOYEE'S WORK:**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40.0)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the working test period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ADMH 01-03-00235

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Documentation is to be maintained in the agency's personnel files if a "0" or "4" rating is given. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) taken during this working test period.

0 Does Not Meet Standards      1 Partially Meets Standards      2 Meets Standards      3 Exceeds Standards      4 Consistently Exceeds Standards

Responsibilities	Rating
1. <u>ASSISTS HR DIRECTOR WITH DAY TO DAY OPERATIONS IN PLANNING, ORGANIZING, AND...</u>	<u>4</u>
2. <u>COORDINATE EFFORTS OF RECRUITMENT, SELECTION, AND PLACEMENT OF EXEMPT EMPLOYEES.</u>	<u>3</u>
3. <u>RESEARCH AND COORDINATE EFFORTS REGARDING WAGE AND CLASSIFICATION STUDIES.</u>	<u>4</u>
4. <u>MAINTAIN ON GOING CLASS AND PAY INFORMATION FROM GOVERNMENTAL AGENCIES AND PRIVATE..</u>	<u>3</u>
5. <u>ADVISES HR DIRECTOR AND MAKES RECOMMENDATIONS TO DEPARTMENT HEADS, ADMINISTRATORS..</u>	<u>4</u>
6. <u>COORDINATES AND/OR ATTENDS STAFF MEETINGS, FOR INNER OFFICE STAFF, STATE PERSONNEL..</u>	<u>3</u>
7. <u>GATHERS INFORMATION AND PREPARES BUDGET FOR PERSONNEL DIVISION AND MONITORS</u>	<u>3</u>
8. <u>COORDINATES SUPERVISORY TRAINING FOR DEPARTMENTAL PERSONNEL OFFICERS AND MAKES...</u>	<u>3</u>
9. <u>PROVIDES SUPERVISION TO PROFESSIONAL AND PARA-PROFESSIONAL STAFF.</u>	<u>3</u>
10. <u>SERVES IN THE ABSENCE OF THE DIRECTOR OF HUMAN RESOURCES.</u>	<u>3</u>

**RESPONSIBILITY SCORE:**

<u>33</u>	÷	<u>10</u>	=	<u>3.3</u>	x	<u>10</u>	=	<u>33</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this working test period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

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**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this working test period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

**DISCIPLINARY SCORE:**

0

Form 13P

EMI DYEE PERFORMANCE APP. ISAL

Revised (1/1/1998)

STATE OF ALABAMA  
Personnel Department**PREAPPRAISAL**

Employee Name: KAREN L HURRARD Social Security Number: [REDACTED]  
 Agency: DAI/MENTAL HEALTH & RETARDATION Division: 4040/CENTRAL OFF ADMIN  
 Classification: ADMIN SUPPORT ASST III Class Code: 10198  
 Period Covered From: 08/01/1998 To: 08/01/1999

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Updates/Maintains exempt job applicant computer database so that applicant information is available to establish applicant pool for departmental vacancies within the deadlines determined by submission of exempt job announcements.

Prepares/Processes/Disburses exempt job announcements so that vacancies are publicized within two days of submission by Personnel Specialist.

Updates/Maintains/Disburses Exempt Job Opportunities List so that the status of announced vacancies are available to all departmental personnel offices on a timely basis.

Generates/compiles/processes complex correspondence and large volume mail-outs so that information is disbursed accurately and efficiently in accordance with project specifications and deadlines.

Create/Edit complex documents, forms, reports, manuals, etc., so that data integrity is maintained and information is disseminated within specified deadlines.

Performs designated GHRS transactions so that personnel transactions are processed in accurate and timely manner within GHRS time frames.

Initiates/Compiles/Types Form 11s for personnel transactions so that the transactions are accurately documented within the time frames set by GHRS, approval schedules, and policy and procedures.

Monitors and maintains service pin inventory and employee eligibility information for Central Office staff so that a list of employees and respective pins are given to the Commissioner with sufficient notice for quarterly presentation.

Receives/Processes/Files/Retrieves documents in multiple filing systems so that the integrity of the systems are maintained with no loss of information and no avoidable delay in retrieval.

Assists the public so that requested information is provided or appropriate referrals are made with no avoidable complaint.

Accepts special assignments within and in addition to regular functions so that Personnel Section efficiency is maintained and all additional assignments are completed within that assignment's specifications and deadlines.

Plaintiffs' Exhibit  
58

ADMH 01-02-00191

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☐ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 7-22-98

Employee Signature: Karen L. Hubbard

Rater Signature: [Signature]

Reviewer Signature: [Signature]

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Ms. Hubbard performs her duties in a timely and efficient manner. she is always willing to assist others.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

N/A

Document the action plan that has been discussed to improve the areas of weakness.

N/A

A midappraisal has been held and performance has been discussed:

Date: 11/15/99

Employee Signature: Karen L. Hubbard

Rater Signature: [Signature]



STATE OF ALABAMA  
PERSONNEL DEPARTMENT

## EMPLOYEE PERFORMANCE APPRAISAL

Number of Steps

Form 13  
Rev. 10/87

(Please read other side before using)

Employee Name: WENI HURLED  
Class Code: 10150  
Classification: ADMIN SUPPORT ASST III  
Position Number: 03044150Social Security Number: [REDACTED]  
Department: MENTAL HEALTH & RETARDATION  
Division: CENTRAL OFF ADMIN  
Period Covered From: 08/01/97 To: 08/01/98  
Annual Raise Effective: OCTOBER 1998

WORK HABIT RATINGS: Check the appropriate column. Refer to the policies and procedures for your department. If an Unsatisfactory is given, comments detailing the rating must be provided to the department.

	Satisfactory	Unsatisfactory		Work Habit Score	
Attendance	<u>  </u>	<u>  </u>		X 3.50 =	<u>  </u>
Punctuality	<u>  </u>	<u>  </u>	Unsatisfactory		WORK HABIT
Cooperation w/Coworkers	<u>  </u>	<u>  </u>	Ratings		SCORE
Compliance with Rules (Standards of Conduct)	<u>  </u>	<u>  </u>			

## TASK/RESPONSIBILITY RATINGS:

Use this scale to provide a numerical rating for each of the employee's major work tasks or responsibilities. Refer to the Position Classification Questionnaire (Form 40) in determining the tasks to be rated.

RATING	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<u>4</u> A. Updates/Maintains exempt job applicant database for Central Office and all departmental facilities.					
<u>4</u> B. Prepares exempt job announcements & generates/compiles/processes large-volume email-outs.					
<u>4</u> C. Uses personal computer to process complex correspondence & create forms, reports, manuals, etc.					
<u>3</u> D. Edits/Proofs correspondence, forms, reports, manuals, etc.					
<u>4</u> E. Performs designated CHRS transactions.					
<u>4</u> F. Initiates/Compiles/Types Form 11s for personnel transactions.					
<u>3</u> G. Coordinates service pin presentations to Central Office staff (approx 200 employees)					
<u>4</u> H. Receives/Processes/Files/Retrieves documents in multiple filing systems.					
<u>4</u> I. Assists in preparation for and scheduling of interviews for Central Office exempt positions.					
<u>3</u> J. Assists the public regarding employment opportunities.					
<u>3.7</u> TOTAL OF RATINGS					

## PERFORMANCE APPRAISAL SCORE:

<u>3.7</u>	÷	<u>10</u>	=	<u>3.7</u>	x 10 =	<u>37.0</u>	-	<u>0</u>	=	<u>37.0</u>
Total of Ratings		Number of Ratings		Average Task Rating		Task Rating Score		Work Habits Score		Performance Appraisal Score

OVERALL APPRAISAL: This employee's work:

<input type="checkbox"/> Does Not Meet Standards (5.4 or below)	<input type="checkbox"/> Partially Meets Standards (5.5 - 14.9)	<input type="checkbox"/> Meets Standards (15.0 - 24.9)	<input type="checkbox"/> Exceeds Standards (25.0 - 34.4)	<input checked="" type="checkbox"/> Consistently Exceeds Standards (34.5 - or above)
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## APPRAISAL SIGNATURES:

Rating Supervisor

Employee (Denotes discussion not necessarily agreement)

Reviewing Supervisor

SSN [REDACTED]SSN           Date 7-22-98Date 7/22/98Date           

Date Rater's Comments Attached

Date Employee's Comments Attached

Date Reviewer's Comments Attached

ADMH 01-02-00071

Form JF  
(Rev. 10/87)

STATE OF ALABAMA

☒ Preliminary Report ☐ Final Report

## PERSONNEL DEPARTMENT

## EMPLOYEE PROBATIONARY PERFORMANCE APPRAISAL

(Please read other side before using)

Name of Employee: Karen L. HubbardSocial Security Number: [REDACTED]Class Code: 10198Department: MHDClassification: ASA IIIDivision: 061Position Number: 3064150Period Covered From: 10-11-97 To: 1-10-98

## WORK HABIT RATINGS:

Check the appropriate column. Refer to the policies and procedures for your department.  
If an Unsatisfactory is given, comments detailing the rating must be provided to the department.

	Satisfactory	Unsatisfactory	Work Habit Score
Attendance	<u>✓</u>		<u>-0-</u>
Punctuality	<u>✓</u>		X 3.50 = <u>-0-</u>
Cooperation w/Coworkers	<u>✓</u>		WORK HABIT
Compliance with Rules	<u>✓</u>		SCORE
(Standards of Conduct)			

## TASK/RESPONSIBILITY RATINGS:

Use this scale to provide a numerical rating for each of the employee's major work tasks or responsibilities.  
Refer to the Position Classification Questionnaire (Form 40) in determining the tasks to be rated.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
--	---------------------------------	-----------------------------------	-------------------------	---------------------------	--

RATING	TASK/RESPONSIBILITY
<u>4</u>	A. <u>[REDACTED]</u>
<u>3</u>	B. Prepares exempt job announcements & generates/compiles/processes large volume mail- outs
<u>3</u>	C. <u>[REDACTED]</u>
<u>3</u>	D. Edits/Proofs correspondence, forms, reports, manuals, etc.
<u>3</u>	E. <u>[REDACTED]</u>
<u>3</u>	F. Initiates/Compiles/Types Form 11s for personnel transactions.
<u>3</u>	G. <u>[REDACTED]</u>
<u>3</u>	H. Receives/Processes/Files/Retrieves documents in multiple filing systems.
<u>3</u>	I. <u>[REDACTED]</u>
<u>3</u>	J. Assists the public regarding employment opportunities.
<u>31</u>	TOTAL OF RATINGS

## PERFORMANCE APPRAISAL SCORE:

<u>31</u>	÷	<u>10</u>	=	<u>3.1</u>	x	<u>10</u>	=	<u>31.0</u>	-	<u>-0-</u>	=	<u>31.0</u>
Total of Ratings		Number of Ratings		Average Task Rating		Task Rating Score		Task Rating Score		Work Habits Score		Performance Appraisal Score

## OVERALL APPRAISAL: This employee's work:

<input type="checkbox"/> Does Not Meet Standards (5.4 or below)	<input type="checkbox"/> Partially Meets Standards (5.5 - 14.9)	<input type="checkbox"/> Meets Standards (15.0 - 24.9)	<input checked="" type="checkbox"/> Exceeds Standards (25.0 - 34.4)	<input type="checkbox"/> Consistently Exceeds Standards (34.5 - or above)
---	---	--	---	---

## APPRAISAL SIGNATURES:

[Signature]  
Rating Supervisor
SS: [REDACTED]
1-6-98  
Date Signed/Rater's Comments Attached

Karen L. Hubbard  
Employee (Denotes discussion not necessarily agreement)

1-6-98  
Date Signed/Employee's Comments Attached

It is recommended that the employee be:

☐ Continued probationally in the position named (state reason on back — letter must be attached)

☐ Given permanent status in the position. Probationary increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ Effective \_\_\_\_\_

☐ Terminated before the end of the probationary period (reason stated on back page).

[Signature]  
Appointing Authority

1-6-98  
Date

ADMH 01-02-00074



Form 13F  
(Rev. 10/87)

STATE OF ALABAMA

Preliminary Report ☒ Final Report

## PERSONNEL DEPARTMENT

## EMPLOYEE PROBATIONARY PERFORMANCE APPRAISAL

(Please read other side before using)

Name of Employee: Karen L. HubbardSocial Security Number: [REDACTED]Class Code: 10198Department: MHDClassification: ASA IIIDivision: 061Position Number: 3064150Period Covered From: 10/11/97 To: 4/10/98

## WORK HABIT RATINGS:

Check the appropriate column. Refer to the policies and procedures for your department.  
If an Unsatisfactory is given, comments detailing the rating must be provided to the department.

	Satisfactory	Unsatisfactory	Work Habit Score
Attendance	<u>5</u>		<u>0</u> X 3.50 = <u>0</u>
Punctuality	<u>5</u>		
Cooperation w/ Coworkers	<u>5</u>		
Compliance with Rules (Standards of Conduct)	<u>5</u>		

## TASK/RESPONSIBILITY RATINGS:

Use this scale to provide a numerical rating for each of the employee's major work tasks or responsibilities.  
Refer to the Position Classification Questionnaire (Form 40) in determining the tasks to be rated.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
--	---------------------------------	-----------------------------------	-------------------------	---------------------------	--

RATING	TASK/RESPONSIBILITY
<u>4</u>	A. Updates/maintains exempt job announcements database
<u>4</u>	B. Prepares exempt job announcements & generates/compiles/processes large volume mail-outs
<u>3</u>	C. Uses personal computer to process exempt job announcements
<u>3</u>	D. Edits/Proofs correspondence, forms, reports, manuals, etc.
<u>4</u>	E. Performs designated GHS transactions
<u>4</u>	F. Initiates/Compiles/Types Form 11s for personnel transactions
<u>3</u>	G. Coordinates service presentation to Central Office staff (all employees)
<u>3</u>	H. Receives/Processes/Files/Retrieves documents in multiple filing systems
<u>3</u>	I. Assists in preparation for and scheduling of interviews for Central Office exempt positions
<u>3</u>	J. Assists the public regarding employment opportunities
<u>34</u>	TOTAL OF RATINGS

## PERFORMANCE APPRAISAL SCORE:

<u>34</u>	÷	<u>10</u>	=	<u>3.4</u>	x 10 =	<u>34.0</u>	-	<u>0</u>	=	<u>34.0</u>
Total of Ratings		Number of Ratings		Average Task Rating		Task Rating Score		Work Habits Score		Performance Appraisal Score

## OVERALL APPRAISAL: This employee's work:

<input type="checkbox"/> Does Not Meet Standards (5.4 or below)	<input type="checkbox"/> Partially Meets Standards (5.5 - 14.9)	<input type="checkbox"/> Meets Standards (15.0 - 24.9)	<input checked="" type="checkbox"/> Exceeds Standards (25.0 - 34.4)	<input type="checkbox"/> Consistently Exceeds Standards (34.5 - or above)
--	--	---	--	--

## APPRAISAL SIGNATURES:

[Signature]  
Rating Supervisor

Karen L. Hubbard  
Employee (Denotes discussion not necessarily agreement)

3-9-98  
Date Signed/Rater's Comments Attached

3-9-98  
Date Signed/Employee's Comments Attached

It is recommended that the employee be:

☒ Continued probationally in the position named (state reason on back — letter must be attached)

☐ Given permanent status in the position. Probationary increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ Effective \_\_\_\_\_

☐ Terminated before the end of the probationary period (reason stated on back page).

[Signature]  
Appointing Authority

3-10-98  
Date

ADMH 01-02-00075

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

 Number  
of Steps

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]

Agency: DEPARTMENTAL HEALTH & RETARDATION Division: 4040 CENTRAL OFF ADMIN

Classification: ADMIN SUPPORT ASST III Class Code: 10195

Period Covered From: 09/01/1998 To: 09/01/1999 Annual Raise Effective: OCTOBER 1999

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

33.80  
Responsibility  
Score

0  
Disciplinary  
Score

33.80  
Performance Appraisal  
Score

This employee's work:

☐

Does Not Meet  
Standards  
(6.6 or below)

☐

Partially Meets  
Standards  
(6.7 - 16.6)

☐

Meets  
Standards  
(16.7 - 26.6)

☒

Exceeds  
Standards  
(26.7 - 36.6)

☐

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

discussed during the Preappraisal Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that have been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1. Administer the performance appraisal system for Central Office employees . . .					4
2. Manage exempt applicant tracking system . . .					3
3. Updates/Maintains/Disburses Exempt Job Opportunities List . . .					3
4. Compile/Edit/Create complex documents and reports . . .					3
5. Performs GHRS transactions . . .					3
6. Oversees Central Office employee recognition program . . .					3
7. Provides information and assistance . . .					4
8. Accepts special assignments . . .					4
9. _____					
10. _____					

**RESPONSIBILITY SCORE:**

$$\frac{27}{8} = 3.38 \times 10 = 33.80$$

Total of  
Responsibilities/Results  
Ratings
Number of  
Responsibilities
Average  
Responsibility  
Rating
Responsibility  
Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: CSI/MENTAL HEALTH & RETARDATIONDivision: 4040 CENTRAL OFF ADMINClassification: ADMIN SUPPORT ASST IIIClass Code: 10198Period Covered From: 08/01/1998 To: 08/01/1999Annual Raise Effective: DECEMBER 1999**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]

Signature

Date

Initial if comments are attached

Signature

Date

Initial if comments are attached

SSN: [REDACTED]

Signature

Date

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

33.80Responsibility  
Score0Disciplinary  
Score

=

33.80Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

ADMH 01-02-00068

discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>				
1. Administer the performance appraisal system for Central Office employees . . .				
2. Manage exempt applicant tracking system . . .				
3. Updates/Maintains/Disburses Exempt Job Opportunities List . . .				
4. Compile/Edit/Create complex documents and reports . . .				
5. Performs GHRS transactions . . .				
6. Oversees Central Office employee recognition program . . .				
7. Provides information and assistance . . .				
8. Accepts special assignments . . .				
9. _____				
10. _____				

**RESPONSIBILITY SCORE:**

$$\frac{27}{8} = 3.38 \times 10 = 33.80$$

Total of                      Number of                      Average                      Responsibility  
 responsibilities/Results    Responsibilities    Responsibility    Score  
 Ratings                                           Rating

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_



Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department☐ Number  
of Steps

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION Division: 4040/CENTRAL OFF ADMIN

Classification: ADMIN SUPPORT ASST III Class Code: 10198

Period Covered From: 08/01/1999 To: 08/01/2000 Annual Raise Effective: OCTOBER 2000

APPRAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED] SSN: [REDACTED]

Signature: [Signature] Signature: [Signature] Signature: [Signature]

Date: 8-2-00 Date: 8-2-00 Date: 8-2-00

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

31.30 - 0 = 31.30

Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

☐☐☐☒☐Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

period.	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1.	Administer the performance appraisal system for Central Office employees . . .				4
2.	Process annual merit raises for Central Office employees . . .				3
3.	Manage exempt applicant tracking system . . .				3
4.	Compile/Edit/Create complex documents and reports . . .				3
5.	Performs/Monitors GHRS transactions . . .				3
6.	Provides information and assistance . . .				4
7.	Accepts special assignments . . .				3
8.					
9.					
10.					

**RESPONSIBILITY SCORE:**

$$\frac{26}{\text{Total of Responsibilities/Results Ratings}} \div \frac{8}{\text{Number of Responsibilities}} = \frac{3.23}{\text{Average Responsibility Rating}} \times 10 = \frac{32.30}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13P

EMPLOYEE PERFORMANCE APPRAISAL

Revised (1/1/1998)

STATE OF ALABAMA

Personnel Department

**PREAPPRAISAL**Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2001 To: 05/01/2002

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Administer the performance appraisal system for Central Office employees so that supervisors receive guidance in completing employee performance appraisals according to designated guidelines and formats and necessary paperwork is signed and submitted to State Personnel according to required time frames.

Manage exempt applicant tracking system so that employment inquiries are appropriately processed with pertinent information exchanged, a viable applicant pool maintained, and current vacancy announcements dispersed and published according to established guidelines and policies.

Performs and provides technical assistance for GHRS transactions so that personnel transactions are processed in accurate and timely manner within GHRS time frames.

Provides information and assistance so that the purposes and objectives of the Department's personnel offices are supported, conveyed, and realized according to related guidelines, policies, and procedures.

Provide technical assistance and support for Greil Personnel Office so that personnel functions are administered according to related time frames, guidelines, policies, and procedures.

Accepts special assignments/projects so that assignments/projects are completed according to related guidelines, policies, and procedures, and designated specifications and deadlines.

Supervises Personnel Assistant I at Greil Hospital to ensure that assigned work is completed accurately according to appropriate policies, procedures, and time frames as evidenced by uninterrupted office productivity, and no valid complaints.



**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 5/11/01

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Ewing

Reviewer Signature: [Signature]

### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee has done a very good job in adjusting to her new assignment at Grid Hosp. and continues to do outstanding work in fulfilling her obligations in Central office. Excellent work in providing info. for M.H.U. Ridge senecross.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 12-21-01  
Employee Signature: Karen Hubbard Rater Signature: Henry E. Ewing

Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department2 Number  
of Steps

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]  
 Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
 Classification: PERSONNEL SPECIALIST III Class Code: H3000  
 Period Covered From: 05/01/2000 To: 05/01/2001 Annual Raise Effective: JULY 2001

APPRAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

Rating Supervisor	Employee	Reviewing Supervisor
SSN: <u>[REDACTED]</u>		SSN: <u>[REDACTED]</u>
Signature: <u>[Signature]</u>	Signature: <u>Karen L Hubbard</u>	Signature: <u>[Signature]</u>
Date: <u>5/11/01</u>	Date: <u>5/11/01</u>	Date: _____
Initial if comments are attached	Initial if comments are attached	Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

3.00 - 0 = 30.00  
 Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
Responsibility	Rating				
1. Administer the performance appraisal system for Central Office . . . . .					4
2. Manage exempt applicant tracking system . . . . .					3
3. Perform and provide technical assistance for GHRS transactions . . . . .					3
4. Provide information and assistance . . . . .					2
5. Provide technical assistance and support for Greil Personnel Office . . . . .					3
6. Accepts special assignments/projects . . . . .					3
7. . . . .					
8. . . . .					
9. . . . .					
10. . . . .					

**RESPONSIBILITY SCORE:**

$$\frac{18}{6} = 3.00 \times 10 = 30.00$$

Total of                      Number of                      Average                      Responsibility  
 Responsibilities/Results    Responsibilities    Responsibility    Score  
 Ratings                                           Rating

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE:

0

ALABAMA DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION

EMPLOYEE WORKING TEST PERIOD  
Exempt & Form 8 Employees

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFFICE ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 07/01/2000 To: 12/31/2000 Position Number: 8813085

APPRAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

SSN [REDACTED] Signature [Signature] Date/Initial if comments are attached \_\_\_\_\_  
Rating Supervisor  
SSN [REDACTED] Signature Karen L. Hubbard Date/Initial if comments are attached 11/5/01  
Reviewing Supervisor  
Signature [Signature] Date/Initial if comments are attached \_\_\_\_\_

It is recommended that:

- ☒ Employee be continued in working test period in position named (state reason in Disciplinary Actions area).  
☐ Employee's working test period be ended. No status granted for non-merit employees (exempt or Form 8).  
☐ Increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ is recommended effective \_\_\_\_\_.  
☐ Employee be terminated before the end of the working test period (state reason in Disciplinary Actions area).

Signed Karen L. Hubbard Date \_\_\_\_\_

PERFORMANCE APPRAISAL SCORE: Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

28 - 0 = 28.00  
Responsibility Score Disciplinary Score Performance Appraisal Score

THIS EMPLOYEE'S WORK:

☐ Does Not Meet Standards (6.6 or below) ☐ Partially Meets Standards (6.7 - 16.6) ☐ Meets Standards (16.7 - 26.6) ☒ Exceeds Standards (26.7 - 36.6) ☐ Consistently Exceeds Standards (36.7 - 40.0)

WORK HABITS: Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the working test period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
operation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Documentation is to be maintained in the agency's personnel files if a "0" or "4" rating is given. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) taken during this working test period.

0	1	2	3	4	
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards	
Responsibilities					Rating
1.	Administer the performance appraisal system . . .				4
2.	Manage the exempt applicant tracking system . . .				3
3.	Provide information and assistance . . .				2
4.	Administer GHRS transactions . . .				3
5.	Provide technical assistance and support to Greil and Tarwater . . .				2
6.					
7.					
8.					
9.					
10.					

**RESPONSIBILITY SCORE:**

$$\frac{14}{\text{Total of Responsibilities/Results Ratings}} \div \frac{5}{\text{Number of Responsibilities}} = \frac{2.8}{\text{Average Responsibility Rating}} \times 10 = \frac{28.00}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this working test period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

*Employee has performed quite well in her new classification as personnel spec. III. additional training will be provided for her in the areas of Exempt Selection Interviewing Techniques as well as other job related training within the next six months.*

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this working test period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

**DISCIPLINARY SCORE:**

Form 13P

Revised (1/1/1998)

EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

**PREAPPRAISAL**Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2001 To: 05/01/2002

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Administer the performance appraisal system for Central Office employees so that supervisors receive guidance in completing employee performance appraisals according to designated guidelines and formats and necessary paperwork is signed and submitted to State Personnel according to required time frames.

Manage exempt applicant tracking system so that employment inquiries are appropriately processed with pertinent information exchanged, a viable applicant pool maintained, and current vacancy announcements dispersed and published according to established guidelines and policies.

Performs and provides technical assistance for GHRIS transactions so that personnel transactions are processed in accurate and timely manner within GHRIS time frames.

Provides information and assistance so that the purposes and objectives of the Department's personnel offices are supported, conveyed, and realized according to related guidelines, policies, and procedures.

Provide technical assistance and support for Greil Personnel Office so that personnel functions are administered according to related time frames, guidelines, policies, and procedures.

Accepts special assignments/projects so that assignments/projects are completed according to related guidelines, policies, and procedures, and designated specifications and deadlines.

Supervises Personnel Assistant I at Greil Hospital to ensure that assigned work is completed accurately according to appropriate policies, procedures, and time frames as evidenced by uninterrupted office productivity, and no valid complaints.

ADMH 01-02-00057



**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 5/11/01

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Ewing

Reviewer Signature: Ross

### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee has done a very good job in adjusting to her new assignment at Grief Hosp. and continues to do outstanding work in fulfilling her obligations in Central office. Excellent work in providing info. for M.H.U. Ridge sentence.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 12-21-01  
Employee Signature: Karen Hubbard Rater Signature: Henry E. Ewing

Form 13  
Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**

2 Number of Steps

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 05/01/2000 To: 05/01/2001 Annual Raise Effective: JULY 2001

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

**Rating Supervisor**

**Employee**

**Reviewing Supervisor**

SS

SSN

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

3.00 - 0 = 30.00  
Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

☐
☐
☐
☒
☐

Does Not Meet  
Standards  
(6.6 or below)

Partially Meets  
Standards  
(6.7 - 16.6)

Meets  
Standards  
(16.7 - 26.6)

Exceeds  
Standards  
(26.7 - 36.6)

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒
☐

Punctuality

☒
☐

Cooperation with Coworkers

☒
☐

Compliance with Rules

☒
☐



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

period.	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					
1.	Administer the performance appraisal system for Central Office . . .				4
2.	Manage exempt applicant tracking system . . .				3
3.	Perform and provide technical assistance for GHRS transactions . . .				3
4.	Provide information and assistance . . .				2
5.	Provide technical assistance and support for Greil Personnel Office . . .				3
6.	Accepts special assignments/projects . . .				3
7.					
8.					
9.					
10.					

**RESPONSIBILITY SCORE:**

$$\frac{18}{6} = 3.00 \times 10 = 30.00$$

Total of                      Number of                      Average                      Responsibility  
 Responsibilities/Results    Responsibilities    Responsibility    Score  
 Ratings                                           Rating

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

## ALABAMA DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION

## EMPLOYEE WORKING TEST PERIOD

## Exempt &amp; Form 8 Employees

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]  
 Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFFICE ADMIN  
 Classification: PERSONNEL SPECIALIST III Class Code: H3000  
 Period Covered From: 07/01/2000 To: 12/31/2000 Position Number: 8813085

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

SSN [REDACTED]  
 Rating Supervisor

Signature

Date/Initial if comments are attached

EMPLOYEE Signature

Date/Initial if comments are attached

SSN [REDACTED]  
 Reviewing Supervisor

Signature

Date/Initial if comments are attached

It is recommended that:

Employee be continued in working test period in position named (state reason in Disciplinary Actions area).

Employee's working test period be ended. No status granted for non-merit employees (exempt or Form 8).

Increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ is recommended effective \_\_\_\_\_.

Employee be terminated before the end of the working test period (state reason in Disciplinary Actions area).

Signed Karen L Hubbard Date \_\_\_\_\_

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

28

Responsibility  
Score

0

Disciplinary  
Score

=

28.00

Performance Appraisal  
Score

## THIS EMPLOYEE'S WORK:

☐ Does Not Meet  
Standards  
(6.6 or below)

☐ Partially Meets  
Standards  
(6.7 - 16.6)

☐ Meets  
Standards  
(16.7 - 26.6)

☒ Exceeds  
Standards  
(26.7 - 36.6)

☐ Consistently Exceeds  
Standards  
(36.7 - 40.0)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the working test period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Attendance

Compliance

☒

Noncompliance

☐

Punctuality

☒

☐

Operation with Coworkers

☒

☐

Compliance with Rules

☒

☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Documentation is maintained in the agency's personnel files if a "0" or "4" rating is given. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) taken during this working test period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards
Responsibilities				Rating
1.	Administer the performance appraisal system . . .			4
2.	Manage the exempt applicant tracking system . . .			3
3.	Provide information and assistance . . .			2
4.	Administer CHRS transactions . . .			3
5.	Provide technical assistance and support to Greil and Tarwater . . .			2
6.				
7.				
8.				
9.				
10.				

**P**ONSIBILITY SCORE:

$$\frac{14}{\text{Total of Responsibilities/Results Ratings}} \div \frac{5}{\text{Number of Responsibilities}} = \frac{2.8}{\text{Average Responsibility Rating}} \times 10 = \frac{28.00}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this working test period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

*Employee has performed quite well in her new classification as personnel spec. III. additional training will be provided for her in the areas of Exempt Selection Interviewing Techniques as well as other job related training within the next six months.*

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this working test period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

**DISCIPLINARY SCORE:** \_\_\_\_\_

Form 13P

EMI JYEE PERFORMANCE APPRAISAL

Revised (1/1/1998)

STATE OF ALABAMA  
Personnel Department**PREAPPRAISAL**Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2002 To: 05/01/2003

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Attend/participate/conduct meetings and committees so that necessary assistance/information is provided in accordance with applicable rules, policies, procedures, standards, etc., as evidenced by realization of specified goals or purpose.

Meet with staff to gather/share information, recommend, counsel, etc. so that the employee's rights and obligations and the Department's position are represented in accordance with applicable rules, policies, procedures, standards, etc.,

Oversee employee performance appraisal and staff competencies so that appraisals and competencies are completed in accordance with applicable rules, policies, procedures, standards, etc.

Review DMH/MR policies and Greil supplements and recommend revisions as necessary so that policies and supplements are instituted in accordance with applicable rules, policies, procedures, standards, etc.

Prepare/review/recommend/approve/process employee disciplinary action to promote employee performance improvement, ensure a safe environment, and maintain Department productivity in accordance with applicable rules, policies, procedures, standards, etc.

Complete/process/supervise personnel transactions so that paperwork and GHRIS entries are submitted according to established procedures and time frames.

Coordinate/supervise/conduct staff recruitment, interview, and selection so that each aspect of personnel administration is conducted according to applicable rules, policies, procedures, standards, etc.

Maintain knowledge of current JCAHO Human Resource Management standards and ensure application of standards in staffing practices so that Greil Hospital is found in compliance for JCAHO accreditation.

ADMH 01-02-00174

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 8-8-02 (May 02)

Employee Signature: Karen L. Hultbald

Rater Signature: Henry E. Emin

Reviewer Signature: [Signature]

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee continues to perform her duties at Grail Hospital and DMX/MR's Central office in an admirable manner. has provided major input in formulating DMX/MR's Affirmative action plan

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 12/5/02

Employee Signature: Karen L. Hultbald Rater Signature: Henry E. Emin

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2001To: 05/01/2002Annual Raise Effective: JULY 2002**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]

Signature

Date

Initial if comments are attached

Signature

Date

Initial if comments are attached

SSN: [REDACTED]

Signature

Date

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

3.3  
Responsibility  
Score

0  
Disciplinary  
Score

=

3.3  
Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

To: SA- Personnel  
5-6-02



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards	
<b>Responsibility</b>					<b>Rating</b>
1. <u>Attend/participate/conduct meetings and committees</u>					<u>3</u>
2. <u>Meet with staff to inform, gather/share information, recommend, counsel</u>					<u>3</u>
3. <u>Coordinate/supervise/review employee performance appraisal and competency</u>					<u>4</u>
4. <u>Reveiw/update Greil supplements to DMH/MR policies</u>					<u>3</u>
5. <u>Prepare/review/recommend/approve/process employee disciplinary action</u>					<u>3</u>
6. <u>Complete/process/supervise personnel related transactions</u>					<u>3</u>
7. <u>Coordinate/supervise/conduct staff recruitment, interview, and selection</u>					<u>3</u>
8. <u>Maintain current compliance and continue efforts in Greil's JCAHO accreditation</u>					<u>4</u>
9. <u>Prepare schedule <sup>and</sup> on-request reports</u>					<u>3</u>
10. <u>Performs special assignments and projects as assigned</u>					<u>4</u>

**RESPONSIBILITY SCORE:**

$$\frac{33}{10} = 3.3 \times 10 = 33.00$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13P  
Revised (1/1/1998)

EMI JYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

**PREAPPRAISAL**

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 05/01/2002 To: 05/01/2003

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Attend/participate/conduct meetings and committees so that necessary assistance/information is provided in accordance with applicable rules, policies, procedures, standards, etc., as evidenced by realization of specified goals or purpose.

Meet with staff to gather/share information, recommend, counsel, etc. so that the employee's rights and obligations and the Department's position are represented in accordance with applicable rules, policies, procedures, standards, etc.,

Oversee employee performance appraisal and staff competencies so that appraisals and competencies are completed in accordance with applicable rules, policies, procedures, standards, etc.

Review DMH/MR policies and Greil supplements and recommend revisions as necessary so that policies and supplements are instituted in accordance with applicable rules, policies, procedures, standards, etc.

Prepare/review/recommend/approve/process employee disciplinary action to promote employee performance improvement, ensure a safe environment, and maintain Department productivity in accordance with applicable rules, policies, procedures, standards, etc.

Complete/process/supervise personnel transactions so that paperwork and GHRS entries are submitted according to established procedures and time frames.

Coordinate/supervise/conduct staff recruitment, interview, and selection so that each aspect of personnel administration is conducted according to applicable rules, policies, procedures, standards, etc.

Maintain knowledge of current JCAHO Human Resource Management standards and ensure application of standards in staffing practices so that Greil Hospital is found in compliance for JCAHO accreditation.



**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 8-8-02 (May 02)

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Emin

Reviewer Signature: [Signature]

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee continues to perform her duties at Grail Hospital and DMH/MR's Central office in an admirable manner. has provided major input in formulating DMH/MR's Affirmative action plan

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 12/5/02

Employee Signature: Karen L. Hubbard Rater Signature: Henry E. Emin

Form 13  
Revised (1/1/1999)**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**☐ Number  
of Steps

Employee Name: KAREN L HUBBARD Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN

Classification: PERSONNEL SPECIALIST III Class Code: H3000

Period Covered From: 05/01/2001 To: 05/01/2002 Annual Raise Effective: JULY 2002

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN [REDACTED]SSN [REDACTED]Signature [Signature]Signature Karen L. HubbardSignature [Signature]Date 5-2-02Date 5-2-02Date 5-3-02

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

33  
Responsibility  
Score0  
Disciplinary  
Score

=

33.0  
Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐To: SA-Perrow  
5-6-02

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards	
<b>Responsibility</b>					<b>Rating</b>
1. <u>Attend/participate/conduct meetings and committees</u>					<u>3</u>
2. <u>Meet with staff to inform, gather/share information, recommend, counsel</u>					<u>3</u>
3. <u>Coordinate/supervise/review employee performance appraisal and competency</u>					<u>4</u>
4. <u>Reveiw/update Greil supplements to DMH/MR policies</u>					<u>3</u>
5. <u>Prepare/review/recommend/approve/process employee disciplinary action</u>					<u>3</u>
6. <u>Complete/process/supervise personnel related transactions</u>					<u>3</u>
7. <u>Coordinate/supervise/conduct staff recruitment, interview, and selection</u>					<u>3</u>
8. <u>Maintain current compliance and continue efforts in Greil's JCAHO accreditation</u>					<u>4</u>
9. <u>Prepare schedule <sup>and</sup> on-request reports</u>					<u>3</u>
10. <u>Reforms special assignments and projects as assigned</u>					<u>4</u>

**RESPONSIBILITY SCORE:**

$$\frac{33}{10} = 3.3 \times 10 = 33.00$$

Total of Responsibilities/Results Ratings	÷	Number of Responsibilities	=	Average Responsibility Rating	x	10	=	Responsibility Score
---	---	-------------------------------	---	-------------------------------------	---	----	---	-------------------------

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13P

EMI JYEE PERFORMANCE APPI SAL

Revised (1/1/1998)

STATE OF ALABAMA  
Personnel Department**PREAPPRAISAL**Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2003 To: 05/01/2004

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Attend/participate/conduct meetings and committees so that necessary assistance/information is provided in accordance with applicable rules, policies, procedures, standards, etc., as evidenced by realization of specified goals or purpose.
2. Meet with staff to gather/share information, recommend, counsel, etc. so that the employee's rights and obligations and the Department's position are represented in accordance with applicable rules, policies, procedures, standards, etc.
3. Oversee employee performance appraisal and staff competencies so that appraisals and competencies are completed in accordance with applicable rules, policies, procedures, standards, etc.
4. Review DMH/MR policies and Greil supplements and recommend revisions as necessary so that policies and supplements are instituted in accordance with applicable rules, policies, procedures, standards, etc.
5. Prepare/review/recommend/approve/process employee disciplinary action to promote employee performance improvement, ensure a safe environment, and maintain Department productivity in accordance with applicable rules, policies, procedure, standards, etc.
6. Complete/process/supervise personnel transactions so that paperwork and GHRS entries are submitted according to established procedures and time frames.
7. Coordinate/supervise/conduct staff recruitment, interview, and selection so that each aspect of personnel administration is conducted according to applicable rules, policies, procedures, standards, etc.
8. Maintain knowledge of current JCAHO Human Resource Management standards and ensure application of standards in staffing practices so that Greil Hospital is found in compliance for JCAHO accreditation.
9. Performs/prepares projects and reports according to applicable rules, policies, procedures, standards, etc.

ADMH 01-02-00168

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 5/2/03

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Evers

Reviewer Signature: John Lynn

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee continues to perform the duties of Personnel Specialist III at a high level, especially during the consolidation and closure of DMN/MR facilities in addition to her assignments at Greil Hospital.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 1/7/04  
 Employee Signature: Karen L. Hubbard Rater Signature: Henry E. Evers

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2002To: 05/01/2003Annual Raise Effective: JULY 2003**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

34  
Responsibility  
Score

0  
Disciplinary  
Score

=

34  
Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4	
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards	
Responsibility					Rating
1. <u>Attends/participate/conduct meetings and committees</u>					<u>4</u>
2. <u>Meet with staff to gather/share information, recommend, counsel, etc</u>					<u>3</u>
3. <u>Oversee employee performance appraisal and staff competencies</u>					<u>4</u>
4. <u>Review DMH/MR policies and Greil supplements and recommend revisions</u>					<u>3</u>
5. <u>Prepare/review/recommend/approve/process employee disciplinary action</u>					<u>4</u>
6. <u>Complete/process/supervise personnel transactions</u>					<u>3</u>
7. <u>Coordinate/supervise/conduct staff recruitment, interview, and selection</u>					<u>3</u>
8. <u>Maintain knowledge of current JCAHO Human Resource Management standards</u>					<u>4</u>
9. <u>Performs/prepares projects and reports</u>					<u>3</u>
10. _____					<u>  </u>

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{31} & \div & \underline{9} & = & \underline{3.4} & \times & 10 = \underline{34} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_



Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**

STATE OF ALABAMA

Personnel Department

 Number  
of Steps
Employee Name: KAREN L. HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2003 To: 05/01/2004Annual Raise Effective: JULY 2004**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN: [REDACTED]SSN: [REDACTED]Signature: [Signature]Signature: Karen L. HubbardSignature: [Signature]Date: 5-3-04Date: 5/5/04Date: 5/6/04

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

<u>35.6</u>	-	<u>0</u>	=	<u>35.6</u>
Responsibility Score		Disciplinary Score		Performance Appraisal Score

This employee's work:

☐☐☐☒☐

Does Not Meet  
Standards  
(6.6 or below)

Partially Meets  
Standards  
(6.7 - 16.6)

Meets  
Standards  
(16.7 - 26.6)

Exceeds  
Standards  
(26.7 - 36.6)

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

5-10-04

ADMH 01-02-00170

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0	1	2	3	4
	Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards
Responsibility					Rating
1. Attends/participate/conduct meetings and committees....					4
2. Meet with staff to gather/share information, recommend, counsel, etc....					3
3. Oversee employee performance appraisals and staff competencies....					4
4. Review DMH/MR Policies and Greil supplements and recommend revisions....					4
5. Prepare/review/recommend/approve/process employee disciplinary actions....					4
6. Complete/process/supervise Personnel transactions....					3
7. Coordinate/supervise/conduct staff recruitment, interview and selection....					3
8. Maintain knowledge of current JCAHO Human Resource Management standards....					4
9. Performs/prepares projects and reports....					3
10. _____					

**RESPONSIBILITY SCORE:**

$$\frac{\cancel{32} \times 32}{9} = 3.555 \times 10 = 35.6$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

*None*

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2002 To: 05/01/2003Annual Raise Effective: JULY 2003**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

34  
Responsibility  
Score

0  
Disciplinary  
Score

34  
Performance Appraisal  
Score

This employee's work:

☐☐☐☒☐Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>				
1. <u>Attends/participate/conduct meetings and committees</u>				
2. <u>Meet with staff to gather/share information, recommend, counsel, etc</u>				
3. <u>Oversee employee performance appraisal and staff competencies</u>				
4. <u>Review DMH/MR policies and Greil supplements and recommend revisions</u>				
5. <u>Prepare/review/recommend/approve/process employee disciplinary action</u>				
6. <u>Complete/process/supervise personnel transactions</u>				
7. <u>Coordinate/supervise/conduct staff recruitment, interview, and selection</u>				
8. <u>Maintain knowledge of current JCAHO Human Resource Management standards</u>				
9. <u>Performs/prepares projects and reports</u>				
10. _____				

**RESPONSIBILITY SCORE:**

<u>31</u>	÷	<u>9</u>	=	<u>3.4</u>	x	10	=	<u>34</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: KAREN L. HUBBARDSocial Security Number: [REDACTED]Agency: PSYCHENTAL HEALTH & RETARDATIONDivision: 4046/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: 10000Period Covered From: 05/01/2004 To: 05/01/2005Annual Raise Effective: JULY 2005**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

36.6  
Responsibility  
Score

0  
Disciplinary  
Score

=

36.6  
Performance Appraisal  
Score

This employee's work:

☐☐☐☒☐

Does Not Meet  
Standards  
(6.6 or below)

Partially Meets  
Standards  
(6.7 - 16.6)

Meets  
Standards  
(16.7 - 26.6)

Exceeds  
Standards  
(26.7 - 36.6)

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

Case 2:07-cv-00650-WHA-TFM Document 52-17 Filed 07/28/2008 Page 41 of 49

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

	0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>					<b>Rating</b>
1. Prepares reports and personnel related documents					4
2. Provides technical assistance for GHRIS transactions					4
3. Provides information and assistance so that the dept. objectives are supported					4
4. Provides technical assistance and support for facility personnel					3
5. Performs special assignments and projects					4
6. Attends and participates in meetings so that information is provided					3
7. _____					
8. _____					
9. _____					
10. _____					

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{22} & \div & \underline{6} & = & \underline{3.66} & \times & 10 = \underline{36.6} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0



Form 13P

Revised (1/1/1998)

EMI JYEE PERFORMANCE APPI SAL

STATE OF ALABAMA

Personnel Department

**PREAPPRAISAL**Employee Name: KAREN L HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2003 To: 05/01/2004

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Attend/participate/conduct meetings and committees so that necessary assistance/information is provided in accordance with applicable rules, policies, procedures, standards, etc., as evidenced by realization of specified goals or purpose.
2. Meet with staff to gather/share information, recommend, counsel, etc. so that the employee's rights and obligations and the Department's position are represented in accordance with applicable rules, policies, procedures, standards, etc.
3. Oversee employee performance appraisal and staff competencies so that appraisals and competencies are completed in accordance with applicable rules, policies, procedures, standards, etc.
4. Review DMH/MR policies and Greil supplements and recommend revisions as necessary so that policies and supplements are instituted in accordance with applicable rules, policies, procedures, standards, etc.
5. Prepare/review/recommend/approve/process employee disciplinary action to promote employee performance improvement, ensure a safe environment, and maintain Department productivity in accordance with applicable rules, policies, procedure, standards, etc.
6. Complete/process/supervise personnel transactions so that paperwork and GHRS entries are submitted according to established procedures and time frames.
7. Coordinate/supervise/conduct staff recruitment, interview, and selection so that each aspect of personnel administration is conducted according to applicable rules, policies, procedures, standards, etc.
8. Maintain knowledge of current JCAHO Human Resource Management standards and ensure application of standards in staffing practices so that Greil Hospital is found in compliance for JCAHO accreditation.
9. Performs/prepares projects and reports according to applicable rules, policies, procedures, standards, etc.

ADMH 01-02-00047



**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 5/2/03

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Emerson

Reviewer Signature: John Lynn

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Employee continues to perform the duties of Personnel Specialist III at a high level, especially during the consolidation and closure of DMN/MR facilities in addition to her assignments at Greil Hospital.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 1/7/04

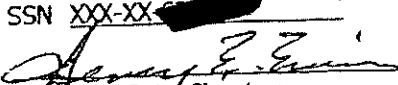

Employee Signature: Karen L. Hubbard

Rater Signature: Henry E. Emerson

Form 13  
Revised (01/2006)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

Employee Name: KAREN L HUBBARD Social Security Number: XXX-XX-XXXX  
 Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
 Classification: PERSONNEL SPECIALIST III Class Code: 03000 Position #: 8813085  
 Period Covered From: 5/1/2006 To: 5/1/2007 Annual Raise Effective: July 2007

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed. Signatures denote supervisor and employee discussion and receipt of form. Employee signature does not denote agreement. All signatures are mandatory.

Rating Supervisor	Employee	Reviewing Supervisor
SSN <u>XXX-XX-XXXX</u>		SSN <u>XXX-XX-XXXX</u>
		
Henry E. Ervin Rater Signature		June Lynn Reviewer Signature
<u>HENRY E ERVIN</u> Rater Printed Name	<u>Karen L Hubbard</u> Employee Signature	<u>JUNE LYNN</u> Reviewer Printed Name
<u>4-18-07</u> Date	<u>4-18-07</u> Date	<u>4/18/07</u> Date
Initial if comments attached	Initial if comments attached	Initial if comments attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score. Mandatory documentation is to be maintained in the agency's personnel files if a "Does Not Meet" or "Consistently Exceeds" rating is given.

$$\begin{array}{rcl}
 \text{Responsibility Score} & - & \text{Disciplinary Score} \\
 \hline
 32.85 & - & 0 \\
 \hline
 & = & 32.85
 \end{array}$$

Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate space for each Work Habit area. Work Habits pertain to conduct occurring in this Appraisal period. Provide an explanation below for marking any work habit as "Unsatisfactory." Attach additional sheets if necessary. No disciplinary action has to be taken to mark a Work Habit "Unsatisfactory."

	Unsatisfactory	Satisfactory	
Attendance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Punctuality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Cooperation with Coworkers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Compliance with Rules	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibility</b>				
<b>Rating</b>				
.. Prepares reports and personnel related documents to ensure that accurate info..				
4				
.. Coordinates/conducts staff, recruitment, interview, and selection process..				
4				
.. Provides technical assistance for GHRS transactions so that personnel..				
3				
.. Provides information and assistance so that the purposes and objectives of..				
3				
.. Provides technical assistance and support for facility personnel offices so..				
3				
.. Performs special assignments/projects so that assignments/projects are..				
3				
.. Attends/participates in meetings so that accurate and appropriate information..				
3				
..				
..				
..				

**RESPONSIBILITY SCORE:**

$$\frac{23}{\text{Total of Responsibilities/Results Ratings}} \div \frac{7}{\text{Number of Responsibilities}} = \frac{32.88}{\text{Average Responsibility Rating}} \times 10 = \frac{32.88}{\text{Responsibility Score}}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be documented below. Provide the number of disciplinary actions and steps taken with the employee during the appraisal year. If disciplinary action has been taken, a "0" should be marked in each block provided. Attach a copy of the warning(s), reprimand(s), suspension(s) or demotion to the Appraisal.

<b>Warning</b>	<b>Reprimand</b>	<b>Suspension</b>	<b>Demotion</b>
0	0	0	0

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand, suspension, and demotion only. The Disciplinary Score does not include scores for counseling and warnings. To calculate the Disciplinary Score, identify the most severe step of discipline taken with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. If the most severe step taken with the employee in the appraisal year was one or more demotions, the Disciplinary Score will be 24. Otherwise, the Disciplinary Score will be 0.

**DISCIPLINARY SCORE:** 0

Form 13P

Revised (06/2005)

**EMPLOYEE PERFORMANCE PREAPPRAISAL****STATE OF ALABAMA****Personnel Department**Employee Name: KAREN L. HUBBARDSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 05/01/2006 to: 05/01/2007Position Number: 08813085

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These factors should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on specifics of preparing, conducting, and completing the Preappraisal. Refer to the same manual for information concerning how to develop responsibilities and results.

1. Prepares reports and personnel related documents to ensure that accurate information is conveyed according to applicable rules, policies, procedures, standards, and designated specifications and deadlines.
2. Coordinates/conducts staff, recruitment, interview, and selection process so that each aspect of personnel administration is conducted according to applicable laws, rules, policies, procedures, standards, etc.
3. Provides technical assistance for GHRS transactions so that personnel transactions are processed in accurate and timely manner within GHRS time frames.
4. Provides information and assistance so that the purposes and objectives of the Department's personnel offices are supported, conveyed, and realized according to related guidelines, policies, and procedures.
5. Provides technical assistance and support for facility personnel offices so that personnel functions are administered according to related time frames, guidelines, policies, and procedures.
6. Performs special assignments/projects so that assignments/projects are completed according to related guidelines, policies, and procedures, and designated specifications and deadlines.
7. Attends/participates in meetings so that accurate and appropriate information and assistance related to personnel issues is provided in accordance with applicable laws, rules, policies, procedures, standards, etc.
8. Supervise Personnel Assistant II in the provision of personnel services related to performance appraisal, background checks, personnel transactions, etc. so that personnel services are performed according to related policies, procedures, and time frames.

ADMH 01-02-00275

**WORK HABITS:** Provide a check in the appropriate space to document that the policies and procedures concerning the following areas have been discussed with the employee. For instructions, refer to the Performance Appraisal Manual and policies of the agency.

CHECK WHEN DISCUSSED:

<input checked="" type="checkbox"/>	Attendance
<input checked="" type="checkbox"/>	Punctuality
<input checked="" type="checkbox"/>	Cooperation with Coworkers
<input checked="" type="checkbox"/>	Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Signatures are mandatory.

Date the Preappraisal Session was held with the employee: April 20, 2006

Employee Signature: (denotes discussion and receipt of form, not agreement) Karen L. Hubbell

Rater Signature: (denotes discussion and employee receipt of form) Henry E. Ewing

Reviewer Signature: [Signature]

### EMPLOYEE PERFORMANCE MIDAPPRAISAL

Describe any employee's strength(s) in performing responsibilities and/or conducting work habits, as observed, during the first half of the appraisal period.

Employee continues to perform her duties as Personnel Specialist III in a fully competent manner and has established a good working relationship with the State Medical Examiner Board.

Describe any area(s) that the employee needs to improve in performance of responsibilities and/or work habits, as observed, during the first half of the appraisal period. Document any actions taken or the corrective action plan that was developed to improve the areas of weakness. If a plan has not been developed, it is appropriate for the rater to consider developing a plan at this time.

State the areas where the employee has performed in a fully competent manner during the first half of the appraisal period. Documentation in this area means that the employee performed to the expected level of performance as discussed in the Preappraisal session. If there is no documentation in the first two areas, this section should be completed.

A Midappraisal session has been held on this date and performance has been discussed: 11/21/06

Employee Signature: Karen L. Hubbell Initial if comments attached: \_\_\_\_\_

Rater Signature: Henry E. Ewing Initial if comments attached: \_\_\_\_\_

Reviewer Signature: [Signature] Initial if comments attached: \_\_\_\_\_

(Signatures denote that a Midappraisal session has been held between the supervisor and employee. Signatures are mandatory. Employee signature does not denote agreement but discussion of the form and rater comments. Comments may be attached. The person attaching comments must initial in the appropriate space.)

Form 13  
Revised (01/2006)**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department**Employee Name: KAREN L HUBBARDSocial Security Number: XXX-XX-XXXXAgency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000 Position #: 08813085Period Covered From: 05/01/2005 To: 05/01/2006Annual Raise Effective: JULY 2006

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed. Signatures denote supervisor and employee discussion and receipt of form. Employee signature does not denote agreement. All signatures are mandatory.

**Rating Supervisor**SSN XXX-XX-XXXXHenry E. Ervin  
Rater SignatureHenry E. Ervin  
Rater Printed Name4-20-06  
Date

Initial if comments attached

**Employee**Karen L. Hubbard  
Employee Signature4/20/06  
Date

Initial if comments attached

**Reviewing Supervisor**SSN XXX-XX-XXXXD.R. Smith  
Reviewer SignatureD.R. Smith  
Reviewer Printed Name

Date

Initial if comments attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score. Mandatory documentation is to be maintained in the agency's personnel files if a "Does Not Meet" or "Consistently Exceeds" rating is given.

35.7Responsibility  
Score0Disciplinary  
Score35.7Performance Appraisal  
Score

This employee's work:

Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate space for each Work Habit area. Work Habits pertain to conduct occurring in this Appraisal period. Provide an explanation below for marking any work habit as "Unsatisfactory." Attach additional sheets if necessary. No disciplinary action has to be taken to mark a Work Habit "Unsatisfactory."

**Unsatisfactory****Satisfactory**

Attendance

\_\_\_\_\_

✓

\_\_\_\_\_

Punctuality

\_\_\_\_\_

✓

\_\_\_\_\_

Cooperation with Coworkers

\_\_\_\_\_

✓

\_\_\_\_\_

Compliance with Rules

\_\_\_\_\_

✓

\_\_\_\_\_

ADMH 01-02-00277



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

**Responsibility****Rating**

- |  |                      |
|--|----------------------|
| 1. Prepares reports and personnel related documents to ensure that accurate information is conveyed according to applicable rules, policies, procedures, standards, and designated specifications and deadlines.         | 4                    |
| 2. Coordinates/conducts staff, recruitments, interview, and selection process so that each aspect of personnel administration is conducted according to applicable.  | 4                    |
| 3. Provides technical assistance for GHRIS transactions so that personnel transactions are processed in accurate and timely manner within GHRIS time frames.   | 3                    |
| 4. Provides information and assistance so that the purposes and objectives of the Department's personnel offices are supported, conveyed, and realized according to..  | 4                    |
| 5. Provides technical assistance and support for facility personnel offices so that personnel functions are administered according to related time frames,...  | 3                    |
| 6. Performs special assignments/projects so that assignments/projects are completed according to related guidelines, policies, and procedures, and designated...   | 4                    |
| 7. Attends/participates in meetings so that accurate and appropriate information and assistance related to personnel issues is provided in accordance with applicable laws, rules, policies, procedures, standards, etc. | 3                    |
| 8. _____   | <input type="text"/> |
| 9. _____   | <input type="text"/> |
| 10. _____  | <input type="text"/> |

**RESPONSIBILITY SCORE:**

<u>25</u>	÷	<u>7</u>	=	<u>3.57</u>	×	10	=	<u>35.7</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be documented below. Provide the number of disciplinary actions and steps taken with the employee during the appraisal year. If no disciplinary action has been taken, a "0" should be marked in each block provided. Attach a copy of the warning(s), reprimand(s), suspension(s) or demotion to the Appraisal.

**Warning****Reprimand****Suspension****Demotion**

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand, suspension, and demotion only. The Disciplinary Score does not include scores for counseling and warnings. To calculate the Disciplinary Score, identify the most severe step of discipline taken with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. If the most severe step taken with the employee in the appraisal year was one or more demotions, the Disciplinary Score will be 24. Otherwise, the Disciplinary Score will be 0.

**DISCIPLINARY SCORE:**0



Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: JOAN F OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 12/01/1998 To: 12/01/1999Annual Raise Effective: FEBRUARY 2000**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

2.90Responsibility  
Score0Disciplinary  
Score

=

29.00Performance Appraisal  
Score

This employee's work:

Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance



Punctuality



Cooperation with Coworkers



Compliance with Rules



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. <u>Coordinate / Conduct recruitment, interview and selection process for the facilities</u>	<u>3</u>
2. <u>Administers MHWI examinations, scores test and enters data in computer and</u>	<u>3</u>
3. <u>Supervise the maintenance of employee personnel files so that complete, secure.</u>	<u>3</u>
4. <u>Coordinate/ conducts employee complaint hearings, ensuring timely compliance with</u>	<u>3</u>
5. <u>Process / supervise personnel related transactions (resignations, dismissals, LWOP,</u>	<u>4</u>
6. <u>Provide staff (including department heads) with accurate job related information</u>	<u>2</u>
7. <u>Supervise Facility payroll activities to assure accurate payment for work performed</u>	<u>3</u>
8. <u>Write/ compose personnel related documents to assure timely, accurate compliance</u>	<u>2</u>
9. <u>Attend/ participate in DMH/ MR meetings ( ADA, etc.) as appropriate to assure personnel</u>	<u>3</u>
10. <u>Attends and provides information in pre-disciplinary conferences and unemployment</u>	<u>3</u>

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \underline{29} & \div & \underline{10} & = & \underline{2.90} & \times & 10 & = & \underline{29} \\
 \text{Total of} & & \text{Number of} & & \text{Average} & & & & \text{Responsibility} \\
 \text{Responsibilities/Results} & & \text{Responsibilities} & & \text{Responsibility} & & & & \text{Score} \\
 \text{Ratings} & & & & \text{Rating} & & & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

**PREAPPRAISAL**

Employee Name: Joan Owens Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 214E/GREIL HOSPITAL  
Classification: Personnel Manager I Class Code: H4000  
Period Covered From: 2/27/99 To: 8/27/99

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Coordinate/conduct recruitment, interview and selection process for the Facility to assure compliance with all applicable Personnel regulations and employment of qualified individuals.

Supervise the maintenance of employee personnel files so that complete, secure, confidential files are maintained on all employees.

Coordinate the Employee Performance Appraisal process to assure that all employees are evaluated in compliance with DMH/MR guidelines.

Process/supervise personnel related transactions (resignations, dismissals, LWOP, FMLA, workman's compensation) to assure timely compliance with regulations and minimal disruption for employees and/or the center.

Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the Facility.

Supervise Facility payroll activities to assure accurate payment for work performed.

Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.

Attend/participate in Facility meetings as appropriate to assure personnel expertise is provided to daily operation.

following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: \_\_\_\_\_ Attendance  
\_\_\_\_\_ Punctuality  
\_\_\_\_\_ Cooperation with Coworkers  
\_\_\_\_\_ Compliance with Rules

PREAPPRAISAL SIGNATURES: Date of Session: 3/15/99  
Employee Signature: Joan J. Owens  
Rater Signature: Stephen D. Chambers  
Reviewer Signature: Charles A. Felte

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Document the action plan that has been discussed to improve the areas of weakness.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A midappraisal has been held and performance has been discussed:

Date: \_\_\_\_\_  
Employee Signature: \_\_\_\_\_ Rater Signature: \_\_\_\_\_

## ALABAMA DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION

EMPLOYEE WORKING TEST PERIOD  
Exempt & Form 8 Employees

Employee Name: Joan Owens Social Security Number: [REDACTED]  
 Agency: 061/Mental Health & Retardation Division: 214E/Greil Hospital  
 Classification: Personnel Manager I Class Code: H4000  
 Period Covered From: 02/27/99 To: 08/26/99 Position Number: 8824171

APPAISAL SIGNATURES: Signatures are to be provided after the form has been completed.

SSN 419 - 74 - 1506 Aussan P. Chambers 11/30/99  
 Rating Supervisor Signature Date/Initial if comments are att  
Joan J. Owens 12/1/99  
 EMPLOYEE Signature Date/Initial if comments are att  
 SSN \_\_\_\_\_  
 Reviewing Supervisor Signature Date/Initial if comments are att

ANNUAL APPRAISAL PERIOD  
 02/27/1999 TO 02/26/2000

It is recommended that:

- ☒ Employee be continued in working test period in position named (state reason in Disciplinary Actions area).  
☐ Employee's working test period be ended. No status granted for non-merit employees (exempt or Form 8).  
☐ Increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ is recommended effective \_\_\_\_\_.  
☐ Employee be terminated before the end of the working test period (state reason in Disciplinary Actions area).

Signed [Signature] Date 12-1-99

PERFORMANCE APPRAISAL SCORE: Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score.

27.5  
 Responsibility  
 Score

Disci  
 Sc

27.5  
 Performance Appraisal  
 Score

off 9/11/99  
 due to  
 class size

## THIS EMPLOYEE'S WORK:

☐  
 Does Not Meet  
 Standards  
 (6.6 or below)

☐  
 Partially Meets  
 Standards  
 (6.7 - 16.6)

☐  
 Meets  
 Standards  
 (16.7 - 26.6)

☒  
 Exceeds  
 Standards  
 (26.7 - 36.6)

☐  
 Consistently Exceeds  
 Standards  
 (36.7 - 40.0)

WORK HABITS: Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the working test period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Documentation is to be maintained in the agency's personnel files if a "0" or "4" rating is given. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) taken during this working test period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards
<b>Responsibilities</b>				
1. <u>Coordinate/conduct recruitment, interview and selection process...</u>				<u>3</u>
2. <u>Supervise the maintenance of employee personnel files...</u>				<u>2</u>
3. <u>Coordinate the Employee Performance Appraisal process....</u>				<u>3</u>
4. <u>Process/supervise personnel-related transactions...</u>				<u>3</u>
5. <u>Provide staff (including department heads) with accurate job-related information..</u>				<u>3</u>
6. <u>Supervise Facility payroll activities...</u>				<u>3</u>
7. <u>Write/compose personnel-related documents...</u>				<u>2</u>
8. <u>Attend/participate in Facility meetings...</u>				<u>3</u>
9. _____				<u>  </u>
10. _____				<u>  </u>

**RESPONSIBILITY SCORE:**

<u>22</u>	÷	<u>8</u>	=	<u>2.75</u>	x	10	<u>27.5</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating			Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this working test period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

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**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this working test period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

**DISCIPLINARY SCORE:** \_\_\_\_\_



## ALABAMA DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION

EMPLOYEE WORKING TEST PERIOD  
Exempt & Form 8 Employees

Employee Name: Jean Owens Social Security Number: [REDACTED]  
 Agency: 061/Mental Health & Retardation Division: 214E/Greil Hospital  
 Classification: Personnel Manager 1 Class Code: H4000  
 Period Covered From: 02/27/99 To: 08/26/99 Position Number: 8824171

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

SN _____ Rating Supervisor	Signature _____	Date/Initial if comments are attached _____
	EMPLOYEE Signature _____	Date/Initial if comments are attached _____
SN _____ Reviewing Supervisor	Signature _____	Date/Initial if comments are attached _____

is recommended that:

- \_\_\_\_ Employee be continued in working test period in position named (state reason in Disciplinary Actions area).  
 \_\_\_\_ Employee's working test period be ended. No status granted for non-merit employees (exempt or Form 8).  
 \_\_\_\_ Increase to \$ \_\_\_\_\_ Step \_\_\_\_\_ is recommended effective \_\_\_\_\_.  
 \_\_\_\_ Employee be terminated before the end of the working test period (state reason in Disciplinary Actions area).

Signed \_\_\_\_\_ Date \_\_\_\_\_

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

_____	-	_____	=	_____
Responsibility Score		Disciplinary Score		Performance Appraisal Score

## THIS EMPLOYEE'S WORK:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40.0)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the working test period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input type="checkbox"/>	<input type="checkbox"/>



Employee Name: JOAN F OWENS Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 12/01/1998 To: 12/01/1999 Annual Raise Effective: FEBRUARY 2000

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

**Rating Supervisor**

**Employee**

**Reviewing Supervisor**

SSN: [REDACTED]

SSN: [REDACTED]

Signature: [Signature]  
Date: 1-14-00

Signature: [Signature]  
Date: 1/14/99

Signature: [Signature]  
Date: 1-19-99

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

27 - 0 = 27.00  
Responsibility Score Disciplinary Score Performance Appraisal Score

This employee's work:

☐☐☐☒☐

Does Not Meet  
Standards  
(6.6 or below)

Partially Meets  
Standards  
(6.7 - 16.6)

Meets  
Standards  
(16.7 - 26.6)

Exceeds  
Standards  
(26.7 - 36.6)

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

**RESPONSIBILITIES:** List an ordered version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. Conducts recruitment, interviews and selection process...	3
2. Administers MHW I examinations....	3
3. Maintains employee personnel files....	2
4. Conducts employee complaint hearings....	3
5. Supervises Personnel related transactions....	2
6. Provide staff with accurate job related information....	3
7. Supervise Facility payroll activities....	3
8. Writes/composes documents....	2
9. Attends/participates in MH meetings to provide expertise....	3
10. Attends disciplinary and unemployment hearings.....	3

**RESPONSIBILITY SCORE:**

<u>27</u>	÷	<u>10</u>	=	<u>2.7</u>	x	10	=	<u>27.00</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

**PREAPPRAISAL**

Employee Name: Joan Owens Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 214E/GREIL HOSPITAL  
Classification: Personnel Manager I Class Code: H4000  
Period Covered From: 2/27/99 To: 8/27/99

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

Coordinate/conduct recruitment, interview and selection process for the Facility to assure compliance with all applicable Personnel regulations and employment of qualified individuals.

Supervise the maintenance of employee personnel files so that complete, secure, confidential files are maintained on all employees.

Coordinate the Employee Performance Appraisal process to assure that all employees are evaluated in compliance with DMH/MR guidelines.

Process/supervise personnel related transactions (resignations, dismissals, LWOP, FMLA, workman's compensation) to assure timely compliance with regulations and minimal disruption for employees and/or the center.

Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the Facility.

Supervise Facility payroll activities to assure accurate payment for work performed.

Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.

Attend/participate in Facility meetings as appropriate to assure personnel expertise is provided to daily operation.

**WORK HABITS:** Provide \_\_\_\_\_ in the appropriate space when \_\_\_\_\_ and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: \_\_\_\_\_ Attendance  
 \_\_\_\_\_ Punctuality  
 \_\_\_\_\_ Cooperation with Coworkers  
 \_\_\_\_\_ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 3/15/99

Employee Signature: \_\_\_\_\_

Rater Signature: \_\_\_\_\_

Reviewer Signature: \_\_\_\_\_

### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

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Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

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Document the action plan that has been discussed to improve the areas of weakness.

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A midappraisal has been held and performance has been discussed:

Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Rater Signature: \_\_\_\_\_

Form 13  
Revised (1/1/1999)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department☐ Number  
of Steps

Employee Name: JOAN F OWENS Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION Division: 214E/GREIL HOSPITAL

Classification: M H PERSONNEL MANAGER I Class Code: H4000

Period Covered From: 06/01/1998 To: 06/01/1999 Annual Raise Effective: AUGUST 1999

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor	Employee	Reviewing Supervisor
SSN _____		SSN _____
Signature _____	Signature _____	Signature _____
Date _____	Date _____	Date _____
Initial if comments are attached _____	Initial if comments are attached _____	Initial if comments are attached _____

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

 \_\_\_\_\_  
 Responsibility  
 Score

 \_\_\_\_\_  
 Disciplinary  
 Score

=

 \_\_\_\_\_  
 Performance Appraisal  
 Score

This employee's work:

☐
 Does Not Meet  
 Standards  
 (6.6 or below)
☐
 Partially Meets  
 Standards  
 (6.7 - 16.6)
☐
 Meets  
 Standards  
 (16.7 - 26.6)
☐
 Exceeds  
 Standards  
 (26.7 - 36.6)
☐
 Consistently  
 Exceeds Standards  
 (36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☐☐

Punctuality

☐☐

Cooperation with Coworkers

☐☐

Compliance with Rules

☐☐

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the column for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0  
Does Not Meet  
Standards

1  
Partially Meets  
Standards

2  
Meets  
Standards

3  
Exceeds  
Standards

4  
Consistently Exceeds  
Standards

<i>Responsibility</i>	<i>Rating</i>
1. Coordinate/conduct recruitment, interview and selection process...	<input type="checkbox"/>
2. Supervise the maintenance of employee personnel files...	<input type="checkbox"/>
3. Coordinate the Employee Performance Appraisal process...	<input type="checkbox"/>
4. Process/supervise personnel-related transactions...	<input type="checkbox"/>
5. Provide staff (including department heads) with accurate job-related information...	<input type="checkbox"/>
6. Supervise Facility payroll activities...	<input type="checkbox"/>
7. Write/compose personnel-related documents...	<input type="checkbox"/>
8. Attend/participate in Facility meetings...	<input type="checkbox"/>
9. _____	<input type="checkbox"/>
10. _____	<input type="checkbox"/>

**RESPONSIBILITY SCORE:**

$$\begin{array}{ccccccc}
 \text{Total of} & \div & & = & & \times & 10 & = & \\
 \text{Responsibilities/Results} & & \text{Number of} & & \text{Average} & & & & \text{Responsibility} \\
 \text{Ratings} & & \text{Responsibilities} & & \text{Responsibility} & & & & \text{Score} \\
 & & & & \text{Rating} & & & & 
 \end{array}$$

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: JOAN F. OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 12/01/1999 To: 12/01/2000Annual Raise Effective: FEBRUARY 2001**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor

Employee

Reviewing Supervisor

SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

$$\begin{array}{rcccl}
 \underline{27.0} & - & \underline{0} & = & \underline{27.00} \\
 \text{Responsibility} & & \text{Disciplinary} & & \text{Performance Appraisal} \\
 \text{Score} & & \text{Score} & & \text{Score}
 \end{array}$$

This employee's work:

☐

Does Not Meet  
Standards  
(6.6 or below)

☐

Partially Meets  
Standards  
(6.7 - 16.6)

☐

Meets  
Standards  
(16.7 - 26.6)

☒

Exceeds  
Standards  
(26.7 - 36.6)

☐

Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on 360 discussed during the Preappraisal. Record the appropriate rating in the box. Each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0  
Does Not Meet  
Standards

1  
Partially Meets  
Standards

2  
Meets  
Standards

3  
Exceeds  
Standards

4  
Consistently Exceeds  
Standards

Responsibility	Rating
1. Coordinate/conduct recruitment, interview and selection process for the facilities	3
2. Administers MHWI examinations, scores test and enters data in computer and	3
3. Supervise the maintenance of employee personnel files so that complete, secure,	3
4. Coordinate/conducts employee complaint hearings, ensuring timely compliance with	2
5. Process/supervise personnel related transactions (resignations, dismissals, LWOP,	4
6. Provide staff (including department heads) with accurate job related information	2
7. Supervise Facility payroll activities to assure accurate payment for work performed	2
8. Write/compose personnel related documents to assure timely, accurate compliance	2
9. Attend/participate in DMH/MR meetings (ADA, etc.) as appropriate to assure personnel	3
10. Attends and provides information in pre-disciplinary conferences and unemployment	3

#### RESPONSIBILITY SCORE:

$$\frac{27}{10} = 2.70 \times 10 = 27$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

**PREAPPRAISAL**

Employee Name: JOAN F OWENS Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 12/01/1999 To: 12/01/2000

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Coordinate/conduct recruitment, interview and selection process for the facilities to assure compliance with all applicable Personnel regulations and employment of qualified individuals.
2. Administers MHWI examinations, scores test and enters data in computer and administers the merit system process so that the hiring process flows smoothly and efficiently.
3. Supervise the maintenance of employee personnel files so that complete, secure, confidential files are maintained on all employees.
4. Coordinate/conducts employee complaint hearings, ensuring timely compliance with policy.
5. Process/supervise personnel related transactions (resignations, dismissals, LWOP, FMLA, SEIFC, workman's compensation, military leave, donated sick leave) to assure timely compliance with regulations and minimal disruption for employees and/or the department.
6. Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the department. Advises employees on personnel issues and benefits.
7. Supervise Facility payroll activities to assure accurate payment for work performed.
8. Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.
9. Attend/participate in DMH/MR meetings(ADA, etc.) as appropriate to assure personnel expertise is provided to daily operation.
10. Attends and provides information in pre-disciplinary conferences and unemployment compensation claims hearings to provide personnel expertise regarding DMH/MR policies.

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED:

☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 1-14-00

Employee Signature:

Rater Signature:

Reviewer Signature:

### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date:

Employee Signature:

Rater Signature:

Form 13

Revised (1/1/1999)

## EMPLOYEE PERFORMANCE APPRAISAL

STATE OF ALABAMA

Personnel Department

☐ Number  
of Steps
Employee Name: JOAN F OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 12/01/2000 To: 12/01/2001Annual Raise Effective: FEBRUARY 2002**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

## Rating Supervisor

## Employee

## Reviewing Supervisor

SSN [REDACTED]Employee is unavailable  
for signature.SSN [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

29.0Responsibility  
Score- 0 -Disciplinary  
Score

=

29.0Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. <u>Coordinate /conduct recruitment, interview and selection process for the facilities</u>	<u>3</u>
2. <u>Administers MHWI examinations, scores test and enters data in computer and</u>	<u>3</u>
3. <u>Supervise the maintenance of employee personnel files so that complete, secure.</u>	<u>3</u>
4. <u>Coornidate/conducts employee complaint hearings, ensuring timely compliance with</u>	<u>3</u>
5. <u>Process/supervise personnel related transactions (resignations, dismissals, LWOP,</u>	<u>4</u>
6. <u>Provide staff (including department heads) with accurate job related information</u>	<u>2</u>
7. <u>Supervise Facility payroll activities to assure accurate payment for work performed</u>	<u>3</u>
8. <u>Write/compose personnel related documents to assure timely, accurate compliance</u>	<u>2</u>
9. <u>Attend/participate in DMH/MR meetings (ADA, etc.) as appropriate to assure personnel</u>	<u>3</u>
10. <u>Attends and provides information in pre-disciplinary conferences and unemployment</u>	<u>3</u>

**RESPONSIBILITY SCORE:**

$$\frac{29}{10} = 2.9 \times 10 = 29$$

Total of
Number of
Average
Responsibility  
Responsibilities/Results
Responsibilities
Responsibility
Score  
Ratings

Rating

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

**WORK HABITS:** Provide a \_\_\_\_\_ k in the appropriate space when the p \_\_\_\_\_ es and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: \_\_\_\_\_ Attendance  
 \_\_\_\_\_ Punctuality  
 \_\_\_\_\_ Cooperation with Coworkers  
 \_\_\_\_\_ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Rater Signature: \_\_\_\_\_

Reviewer Signature: \_\_\_\_\_

### MIDAPPRAISAL

Describe the employee

period.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Her mid was due  
 in June 2001.  
 → Joan*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Describe area(s) of the appraisal period.

1/2 half of the

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Document the action plan that has been discussed to improve the areas of weakness.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

A midappraisal has been held and performance has been discussed:

Date: \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Rater Signature: \_\_\_\_\_



Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**

STATE OF ALABAMA

Personnel Department

Number  
of StepsEmployee Name: JOAN F OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 12/01/2001To: 12/01/2002Annual Raise Effective: FEBRUARY 2003**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN: [REDACTED]SSN: [REDACTED]

Signature

Signature

Signature

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

31.03Responsibility  
Score0Disciplinary  
Score

=

31.03Performance Appraisal  
Score

This employee's work:

☐☐☐☒☐Does Not Meet  
Standards  
(6.6 or below)Partially Meets  
Standards  
(6.7 - 16.6)Meets  
Standards  
(16.7 - 26.6)Exceeds  
Standards  
(26.7 - 36.6)Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐



**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. <u>Coordinate/conduct recruitment, interview and selection process</u>	<u>3</u>
2. <u>Administers MBWI examinations; scores test and enter data in computer</u>	<u>3</u>
3. <u>Supervise the maintenance of employees' personnel files</u>	<u>3</u>
4. <u>Coordinate/conducts employee complaint hearings</u>	<u>3</u>
5. <u>Process/supervise personnel related transactions</u>	<u>4</u>
6. <u>Provide staff (including department heads) with accurate job related information</u>	<u>3</u>
7. <u>Supervise Facility payroll activities</u>	<u>3</u>
8. <u>Write/compose personnel related documents</u>	<u>3</u>
9. <u>Attend/participate in DMH/HR meetings (ADA, etc.)</u>	<u>3</u>
10. <u>Attends and provides information in pre-disciplinary conferences and unemployment compensation claims hearings</u>	<u>3</u>

**RESPONSIBILITY SCORE:**

<u>31</u>	÷	<u>10</u>	=	<u>3.1</u>	x	10	=	<u>31.00</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

2/1/11

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 6

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 2/1/02  
 Employee Signature: [Signature]  
 Rater Signature: [Signature]  
 Reviewer Signature: [Signature]

**MIDAPPRAISAL**

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.  
This employee performs her duties in an  
admirable manner and is eager to assist any  
employee she comes in contact with.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.  
N/A

Document the action plan that has been discussed to improve the areas of weakness.  
N/A

A midappraisal has been held and performance has been discussed:  
 Date: 2-2-02  
 Employee Signature: [Signature] Rater Signature: [Signature]

Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL**

STATE OF ALABAMA

Personnel Department

Number  
of StepsEmployee Name: JOAN F. OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3900Period Covered From: 12/01/2002To: 12/01/2003Annual Raise Effective: FEBRUARY 2004**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN: [REDACTED]SSN: [REDACTED]Signature  
Henry E. EwingSignature  
Joan F. OwensSignature  
June Sym

11-24-03

11-26-03

12-2-03

Date

Date

Date

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.31.0Responsibility  
Score0Disciplinary  
Score

=

31.0Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐

JP 12-8-03

ADMH 01-01-00051

Case 2:07-cv-00850-WPA-TFM Document 52-18 Filed 07/28/2008 Page 25 of 38

RESPONSIBILITIES: This section should include a brief description of the employee's responsibilities as documented in and discussed during the Preappraisal period. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0	1	2	3	4
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

Responsibility	Rating
1. Coordinate/conduct recruitment, interview and selection process	3
2. Administers MBWI examinations, scores test and enter data in computer	3
3. Supervises the maintenance of employees' personnel files	3
4. Coordinate/conducts employee complaint hearings	4
5. Process/supervise personnel related transactions	3
6. Provide staff(including department heads) with accurate job related information	3
7. Supervise facility payroll activities	3
8. Write/compose personnel related documents	3
9. Attend/participate in DMH/MR meetings (ADA, etc.)	3
10. Attends and provides information in pre-disciplinary conferences and unemploy. comp.	3

**RESPONSIBILITY SCORE:**

31	÷	10	=	3.10	x	10	=	31.0
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: \_\_\_\_\_

**PREAPPRAISAL**

Employee Name: JOAN F OWENS Social Security Number: [REDACTED]  
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 12/01/2002 To: 12/01/2003

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Coordinate/conduct recruitment, interview and selection process for the facilities to assure compliance with all applicable Personnel regulations and employment of qualified individuals.
2. Administers MHWI examinations, scores test and enters data in computer and administers the merit system process so that the hiring process flows smoothly and efficiently.
3. Supervise the maintenance of employees' personnel files so that complete, secure, confidential files are maintained on all employees.
4. Coordinate/conducts employee complaint hearings, ensuring timely compliance with policy.
5. Process/supervise personnel related transactions (resignations, dismissals, LWOP, FMLA, SEIFC, workman's compensation, military leave, donate sick leave) to assure timely compliance with regulations and minimal disruption for employees and/or the department.
6. Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the department. Advises employees on personnel issues and benefits.
7. Supervise Facility payroll activities to assure accurate payments for work performed.
8. Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.
9. Attend/participate in DMH/MR meetings (ADA, etc.) as appropriate to assure personnel expertise is provided to daily operation.
10. Attends and provides information in pre-disciplinary conferences and unemployment compensation claims hearings to provide personnel expertise regarding DMH/MR policies

**WORK HABITS:** Provide a check in the appropriate space when the policies and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 11-27-02

Employee Signature: [Signature]

Rater Signature: [Signature]

Reviewer Signature: [Signature]

### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

This employee continues to perform her  
duties in a professional & caring manner.

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 6-17-03

Employee Signature: [Signature]

Rater Signature: [Signature]



Form 13P

Revised (1/1/1998)

EM DYEE PERFORMANCE APP. ISAL

STATE OF ALABAMA

Personnel Department

**PREAPPRAISAL**Employee Name: JOAN F OWENSSocial Security Number: [REDACTED]Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000Period Covered From: 12/01/2003 To: 12/01/2004

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Coordinate/conduct recruitment, interview and selection process for the facilities to assure compliance with all applicable Personnel regulations and employment of qualified individuals.
2. Administers MHWI examinations, scores test and enters data in computer and administers the merit system process so that the hiring process flows smoothly and efficiently.
- ✓ 3. Supervise the maintenance of employees' personnel files so that complete, secure, confidential files are maintained on all employees.
4. Coordinate/conducts employee complaint hearings, ensuring timely compliance with policy.
5. Process/supervise personnel related transactions (resignations, dismissals, LWOP, FMLA, SEIFC, workman's compensation, military leave, donate sick leave) to assure timely compliance with regulations and minimal disruption for employees and/or the department.
6. Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the department. Advises employees on personnel issues and benefits.
7. Coordinates the DMH/MR Central Office EAP (Employee Assistance Program) to assure that employees are referred to the appropriate service area in a timely and confidential manner.
8. Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.
9. Attend/participate in DMH/MR meetings (ADA, etc.) as appropriate to assure personnel expertise is provided to daily operation.
10. Attends and provides information in pre-disciplinary conferences and unemployment compensation claims hearings to provide personnel expertise regarding DMH/MR policies



**WORK HABITS:** Provide a k in the appropriate space when the l es and procedures concerning the following areas have been discussed with the employee. In particular, the attendance and punctuality policies should be provided to the employee in writing. For instructions, refer to the performance appraisal manual and policies of the agency.

CHECK IF DISCUSSED: ☒ Attendance  
☒ Punctuality  
☒ Cooperation with Coworkers  
☒ Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Date of Session: 11-26-03

Employee Signature: Joan J. Owens

Rater Signature: Henry E. Ewing

Reviewer Signature: X Joan J. Owens

#### MIDAPPRAISAL

Describe the employee's performance strength(s) as observed during the first half of the appraisal period.

This Employee has shown exceptional leadership skills in the areas of Family Medical Leave (FMLA), and (SEITF). This Employee provides Excellent Technical assistance to our facilities + Regional offices

Describe area(s) of the employee's performance that need improvement as observed during the first half of the appraisal period.

✓

Document the action plan that has been discussed to improve the areas of weakness.

A midappraisal has been held and performance has been discussed:

Date: 8-24-04

Employee Signature: Joan J. Owens

Rater Signature: Henry E. Ewing

Form 13  
Revised (1/1/1999)**EMPLOYEE PERFORMANCE APPRAISAL**  
**STATE OF ALABAMA**  
**Personnel Department** Number  
of Steps

Employee Name: JOAN F OWENS Social Security Number: [REDACTED]

Agency: OB1/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN

Classification: PERSONNEL SPECIALIST III Class Code: H9000

Period Covered From: 12/01/2003 To: 12/01/2004 Annual Raise Effective: FEBRUARY 2005

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.

Rating Supervisor	Employee	Reviewing Supervisor
SSN <u>                    </u>		SSN <u>                    </u>
Signature <u>                    </u>	Signature <u>                    </u>	Signature <u>                    </u>
Date <u>                    </u>	Date <u>                    </u>	Date <u>                    </u>
Initial if comments are attached <u>                    </u>	Initial if comments are attached <u>                    </u>	Initial if comments are attached <u>                    </u>

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

<u>                    </u>	<u>                    </u>	<u>                    </u>
Responsibility Score	Disciplinary Score	Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS :** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

	Compliance	Noncompliance
Attendance	<input type="checkbox"/>	<input type="checkbox"/>
Punctuality	<input type="checkbox"/>	<input type="checkbox"/>
Cooperation with Coworkers	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with Rules	<input type="checkbox"/>	<input type="checkbox"/>

RESPONSIBILITIES: The following are the responsibilities of the employee as discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards      1 Partially Meets Standards      2 Meets Standards      3 Exceeds Standards      4 Consistently Exceeds Standards

Responsibility	Rating
1. Coordinate interviews and selection process	3
2. Administer the State Employees Injury Trust Fund (SEITF)	3
3. Coordinates Family Medical Leave (FMLA)	4
4. Administers Employees Assistance Program (EAP)	3
5. Attends and provides information for unemployment compensation	3
6. Administers and is Chairperson for Americans with Disabilities (ADA)	4
7. Receives and handles "employee complaints, hostile work and sexual harassment complaints. Receives and completes EEOC claims	4
8. Write/compose personnel related documents	3
9. Provide staff (including department heads) with accurate job related information	3
10. Process personnel related transactions	3

#### RESPONSIBILITY SCORE:

$$\frac{33}{10} = 3.30 \times 10 = 33.00$$
 Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be listed below. For each area, list the specific disciplinary step taken, the date of action, and the reason or unwanted behavior it involved. Copies of disciplinary documentation are to be maintained in the agency's personnel files. Remember, appropriate responsibilities and work habit(s) should reflect the fact that performance required disciplinary action.

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand and suspension only. The Disciplinary Score does not include warnings (oral). Warnings are documented only in the Work Habits and Disciplinary Actions areas. Identify the most severe step of the discipline system that has been utilized with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. Otherwise, the Disciplinary Score will be zero.

DISCIPLINARY SCORE: 0

Form 13

Revised (1/1/1999)

**EMPLOYEE PERFORMANCE APPRAISAL****STATE OF ALABAMA****Personnel Department**
☐ Number  
of Steps
Employee Name: Joan F. OwensSocial Security Number: [REDACTED]Agency: 061/Mental Health & RetardationDivision: 404E/Central Office AdministrationClassification: Personnel Specialist IIIClass Code: H3000Period Covered From: 12/01/2003 To: 12/01/2004Annual Raise Effective: February 2005**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed.**Rating Supervisor****Employee****Reviewing Supervisor**SSN: [REDACTED]SSN: [REDACTED]Signature [Signature]Signature [Signature]Signature [Signature]Date 12-21-04Date 12/21/04Date 12/22/04

Initial if comments are attached

Initial if comments are attached

Initial if comments are attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score.

3.30Responsibility  
Score0Disciplinary  
Score

=

33.00Performance Appraisal  
Score

This employee's work:

☐Does Not Meet  
Standards  
(6.6 or below)☐Partially Meets  
Standards  
(6.7 - 16.6)☐Meets  
Standards  
(16.7 - 26.6)☒Exceeds  
Standards  
(26.7 - 36.6)☐Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate box for each work habit area. If "Noncompliance" is to be marked, a step of the discipline system (warning, reprimand, suspension) must have been taken with the employee during the appraisal period. See the Disciplinary Actions area on the back of this form for disciplinary documentation.

Compliance

Noncompliance

Attendance

☒☐

Punctuality

☒☐

Cooperation with Coworkers

☒☐

Compliance with Rules

☒☐Spec. 1-13-05


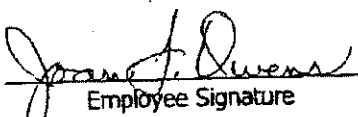

ADMH 01-01-00056

Form 13  
Revised (06/2005)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel DepartmentEmployee Name: JOAN F OWENS

Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATIONDivision: 404E/CENTRAL OFF ADMINClassification: PERSONNEL SPECIALIST IIIClass Code: H3000 Position #: 08813136Period Covered From: 12/01/2004 To: 12/01/2005Annual Raise Effective: FEBRUARY 2006

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed. Signatures denote supervisor and employee discussion and receipt of form. Employee signature does not denote agreement. All signatures are mandatory.

Rating Supervisor	Employee	Reviewing Supervisor
SSN [REDACTED]		SSN [REDACTED]
		
Rater Signature	Employee Signature	Reviewer Signature
<u>11-30-05</u>	<u>11-30-05</u>	<u>11/30/05</u>
Date	Date	Date
Initial if comments attached	Initial if comments attached	Initial if comments attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score. Mandatory documentation is to be maintained in the agency's personnel files if a "Does Not Meet" or "Consistently Exceeds" rating is given.

<u>32</u>	-	<u>0</u>	=	<u>32.00</u>
Responsibility Score		Disciplinary Score		Performance Appraisal Score

This employee's work:

☐  
Does Not Meet  
Standards  
(6.6 or below)

☐  
Partially Meets  
Standards  
(6.7 - 16.6)

☐  
Meets  
Standards  
(16.7 - 26.6)

☒  
Exceeds  
Standards  
(26.7 - 36.6)

☐  
Consistently  
Exceeds Standards  
(36.7 - 40)

**WORK HABITS:** Check the appropriate space for each Work Habit area. Work Habits pertain to conduct occurring in this Appraisal period. Provide an explanation below for marking any work habit as "Unsatisfactory." Attach additional sheets if necessary.

	Unsatisfactory	Satisfactory
Attendance	_____	<input checked="" type="checkbox"/>
Punctuality	_____	<input checked="" type="checkbox"/>
Cooperation with Coworkers	_____	<input checked="" type="checkbox"/>
Compliance with Rules	_____	<input checked="" type="checkbox"/>

THIS DEC - 6 A 9 30  
 STATE PERSONNEL DEPARTMENT

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Does Not Meet Standards	Partially Meets Standards	Meets Standards	Exceeds Standards	Consistently Exceeds Standards

<b>Responsibility</b>	<b>Rating</b>
1. Coordinate/conduct recruitment, interview and selection process	3
2. Administers MHWI examinations, scores test and enter data in computer	3
3. Review and investigate On The Job Harassment/Hostile Work Environment	3
4. Coordinate/conduct employee complaint hearings	3
5. Process/supervise personnel related transactions	3
6. Provide staff (including department heads) with accurate job related information	3
7. Coordinates the DMH/MR Central Office EAP	4
8. Write/compose personnel related documents	3
9. Attend/participate in DMH/MR meetings (ADA. etc.)	4
10. Attends and provides information in pre-disciplinary conferences and unemploy. comp.	3

**RESPONSIBILITY SCORE:**

<u>32</u>	÷	<u>10</u>	=	<u>3.2</u>	×	10	=	<u>32.0</u>
Total of Responsibilities/Results Ratings		Number of Responsibilities		Average Responsibility Rating				Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be documented below. Provide the number of disciplinary actions and steps taken with the employee during the appraisal year. If no disciplinary action has been taken, a "0" should be marked in each block provided. Attach a copy of the warning(s), reprimand(s), suspension(s) or demotion to the Appraisal.

**Warning**

**Reprimand**

**Suspension**

**Demotion**

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand, suspension, and demotion only. The Disciplinary Score does not include scores for counseling and warnings. To calculate the Disciplinary Score, identify the most severe step of discipline taken with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. If the most severe step taken with the employee in the appraisal year was one or more demotions, the Disciplinary Score will be 24. Otherwise, the Disciplinary Score will be 0.

**DISCIPLINARY SCORE:**

0



Form 13P  
Revised (06/2005)

EMPLOYEE PERFORMANCE PREAPPRAISAL  
STATE OF ALABAMA  
Personnel Department

Employee Name: JOAN F OWENS

Social Security Number: [REDACTED]

Agency: 061/MENTAL HEALTH & RETARDATION

Division: 404E/CENTRAL OFF ADMIN

Classification: PERSONNEL SPECIALIST III

Class Code: H3000

Period Covered From: 12/01/2005 To: 12/01/2006

Position Number: 08813136

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These factors should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on specifics of preparing, conducting, and completing the Preappraisal. Refer to the same manual for information concerning how to develop responsibilities and results.

1. Coordinate/conduct recruitment, interview and selection process for the facilities to assure compliance with all applicable Personnel regulations and employment of qualified individuals.
2. Administers MHWI examinations, scores test and enters data in computer and administers the merit system process so that the hiring process flows smoothly and efficiently.
3. Review and investigate On The Job Harassment/Hostile Work Environment.
4. Coordinate/conducts employee complaint hearings, ensuring timely compliance with pol.
5. Process/supervise personnel related transactions (FMLA, SEICTF, workman's compensation, EEOC) to assure timely compliance with regulations and minimal disruption for employees and/or the department.
6. Provide staff (including department heads) with accurate job related information to assist in the smooth operation of the department. Advises employees on personnel issues and benefits.
7. Coordinates the DMH/MR Central Office EAP (Employee Assistance Program) to assure that employees are referred to the appropriate service area in a timely and confidential manner.
8. Write/compose personnel related documents to assure timely, accurate compliance with DMH/MR guidelines and accurate record keeping of personnel related matters.
9. Attend/participate in DMH/MR meetings (ADA, etc.) as appropriate to assure personnel expertise is provided to daily operation.
10. Attends and provides information in pre-disciplinary conferences and unemployment compensation claims hearings to provide personnel expertise regarding DMH/MR policies.



**WORK HABITS:** Provide a check in appropriate space to document that policies and procedures concerning the following areas have been discussed with the employee. For instructions, refer to the Performance Appraisal Manual and policies of the agency.

CHECK WHEN DISCUSSED:

<input checked="" type="checkbox"/>	Attendance
<input checked="" type="checkbox"/>	Punctuality
<input checked="" type="checkbox"/>	Cooperation with Coworkers
<input checked="" type="checkbox"/>	Compliance with Rules

**PREAPPRAISAL SIGNATURES:** Signatures are mandatory.

Date the Preappraisal Session was held with the employee: 11-30-05

Employee Signature: (denotes discussion and receipt of form, not agreement) Jean J. Owens

Rater Signature: (denotes discussion and employee receipt of form) Henry E. Egan

Reviewer Signature: Jane Lynn

### EMPLOYEE PERFORMANCE MIDAPPRAISAL

Describe any employee's strength(s) in performing responsibilities and/or conducting work habits, as observed, during the first half of the appraisal period.

This Employee continues to perform her duties in an exceptional manner as they relate to FMLA ADA SEITE and other technical assistance to the Facilities & Regional offices.

Describe any area(s) that the employee needs to improve in performance of responsibilities and/or work habits, as observed, during the first half of the appraisal period. Document any actions taken or the corrective action plan that was developed to improve the areas of weakness. If a plan has not been developed, it is appropriate for the rater to consider developing a plan at this time.

State the areas where the employee has performed in a fully competent manner during the first half of the appraisal period. Documentation in this area means that the employee performed to the expected level of performance as discussed in the Preappraisal session. If there is no documentation in the first two areas, this section should be completed.

A Midappraisal session has been held on this date and performance has been discussed: 7-12-06

Employee Signature: Jean J. Owens Initial if comments attached: \_\_\_\_\_

Rater Signature: Henry E. Egan Initial if comments attached: \_\_\_\_\_


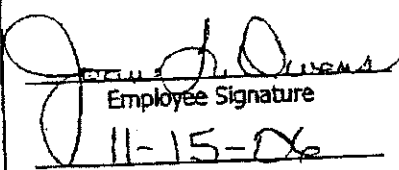
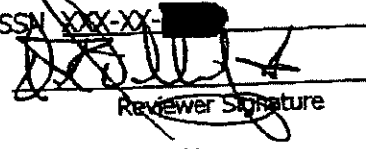
Reviewer Signature: Jane Lynn Initial if comments attached: \_\_\_\_\_

(Signatures denote that a Midappraisal session has been held between the supervisor and employee. Signatures are mandatory. Employee signature does not denote agreement but discussion of the form and rater comments. Comments may be attached. The person attaching comments must initial in the appropriate space.)

Form 13  
Revised (01/2006)EMPLOYEE PERFORMANCE APPRAISAL  
STATE OF ALABAMA  
Personnel Department

Employee Name: JOAN F OWENS Social Security Number: XXX-XX-XXXX  
 Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFF ADMIN  
 Classification: PERSONNEL SPECIALIST III Class Code: 03000 Position #: 8813136  
 Period Covered From: 12/1/2005 To: 12/1/2006 Annual Raise Effective: February 2007

**APPRAISAL SIGNATURES:** Signatures are to be provided after the form has been completed. Signatures denote supervisor and employee discussion and receipt of form. Employee signature does not denote agreement. All signatures are mandatory.

Rating Supervisor	Employee	Reviewing Supervisor
SSN <u>XXX-XX-XXXX</u>		SSN <u>XXX-XX-XXXX</u>
		
Rater Signature	Employee Signature	Reviewer Signature
<u>HENRY E ERVIN</u>		<u>OTHA R DILLHAY</u>
Rater Printed Name		Reviewer Printed Name
<u>Henry E. Ervin</u>	<u>11-15-06</u>	
Date	Date	Date
Initial if comments attached	Initial if comments attached	Initial if comments attached

**PERFORMANCE APPRAISAL SCORE:** Locate the Responsibility Score on the back of this form and write it in the appropriate space. Locate the Disciplinary Score, also on the back of this form, and write it in the appropriate space. The Disciplinary Score is subtracted from the Responsibility Score to derive the Performance Appraisal Score. Mandatory documentation is to be maintained in the agency's personnel files if a "Does Not Meet" or "Consistently Exceeds" rating is given.

34 Responsibility Score - 0 Disciplinary Score = 34.00 Performance Appraisal Score

This employee's work:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does Not Meet Standards (6.6 or below)	Partially Meets Standards (6.7 - 16.6)	Meets Standards (16.7 - 26.6)	Exceeds Standards (26.7 - 36.6)	Consistently Exceeds Standards (36.7 - 40)

**WORK HABITS:** Check the appropriate space for each Work Habit area. Work Habits pertain to conduct occurring in this Appraisal period. Provide an explanation below for marking any work habit as "Unsatisfactory." Attach additional sheets if necessary. No disciplinary action has to be taken to mark a Work Habit "Unsatisfactory."

	Unsatisfactory	Satisfactory	
Attendance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Punctuality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Cooperation with Coworkers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Compliance with Rules	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____

**RESPONSIBILITIES:** List an abbreviated version of the employee's responsibilities below as documented on and discussed during the Preappraisal. Record the appropriate rating in the box for each responsibility. Rating(s) of appropriate responsibilities should reflect any disciplinary action(s) that has been taken during this appraisal period.

0 Does Not Meet Standards	1 Partially Meets Standards	2 Meets Standards	3 Exceeds Standards	4 Consistently Exceeds Standards	Rating
<b>Responsibility</b>					
. COORDINATE/CONDUCT RECRUITMENT, INTERVIEW AND SELECTION PROCESS					3
. ADMINISTERS MHWI EXAMINATIONS, SCORES TEST AND ENTER DATE IN COMPUTER					3
. REVIEW AND INVESTIGATE ON THE JOB HARASSMENT/HOSTILE WORK ENVIRONMENT					4
. COORDINATE/CONDUCTS EMPLOYEE COMPLAINT HEARINGS					4
. PROCESS/SUPERVISE PERSONNEL RELATED TRANSACTIONS					3
. PROVIDE STAFF (INCLUDING DEPARTMENT HEADS) WITH ACCURATE JOB RELATED INFORMATION					3
. COORDINATES THE DMH/MR CENTRAL OFFICE EAP					4
. WRITE/COMPOSE PERSONNEL RELATED DOCUMENTS					3
. ATTEND/PARTICIPATE IN DMH/MR MEETINGS (ADA, ETC)					4
0. ATTENDS AND PROVIDES INFORMATION IN THE PRE-DISCIPLINARY CONF AND UNEMPLOY. COMP					3

**RESPONSIBILITY SCORE:**

$$\frac{34}{10} = 3.4 \times 10 = 34.00$$

Total of Responsibilities/Results Ratings      Number of Responsibilities      Average Responsibility Rating      Responsibility Score

**DISCIPLINARY ACTIONS:** Any disciplinary action taken with the employee during this appraisal period is to be documented below. Provide the number of disciplinary actions and steps taken with the employee during the appraisal year. If no disciplinary action has been taken, a "0" should be marked in each block provided. Attach a copy of the warning(s), reprimand(s), suspension(s) or demotion to the Appraisal.

<b>Warning</b>	<b>Reprimand</b>	<b>Suspension</b>	<b>Demotion</b>
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

**DISCIPLINARY SCORE:** This section should include the use of the discipline steps of reprimand, suspension, and demotion only. The Disciplinary Score does not include scores for counseling and warnings. To calculate the Disciplinary Score, identify the most severe step of discipline taken with the employee during this appraisal period. If the most severe step was one or more reprimands, the Disciplinary Score will be 7. If the most severe step was one or more suspensions, the Disciplinary Score will be 17. If the most severe step taken with the employee in the appraisal year was one or more demotions, the Disciplinary Score will be 24. Otherwise, the Disciplinary Score will be 0.

**DISCIPLINARY SCORE:** 0

# Personnel Specialist III

*Job Code: H3000*

*Pay Range: 75*

**Definition:**

This is specialized administrative work assisting in the direction of human resource management activities for a mental health facility or at the Central Personnel Office.

Employees in this class assist in the direction of a human resource management program of extensive size, scope and complexity. Employees perform such responsible human resource management activities such as recruitment, selection, placement, and classification and pay, requiring close adherence to rules and regulations of the State Personnel Board and to special federal and state laws and regulations. Other employees participate in assigned phases of personnel work in the Central Personnel Office of the Department. Supervision is exercised over subordinate personnel assistants and/or clerical staff engaged in processing and handling a variety of personnel transactions. Employees work with relative independence making decisions on routine matters, but problems encountered or more difficult work are referred to the immediate supervisor or HR Director who makes assignments, and evaluates work through conferences and reviews of completed tasks.

**Examples of Work Performed:** (Any one position may not include all of the duties listed, nor do the examples cover all of the duties, which may be performed.)

- Supervises and coordinates recruitment, selection, and placement of personnel
- Supervises and coordinates the processing of various personnel actions to include appointments, demotions, promotions, reclassifications, retirements, transfers, reallocations, and pre-disciplinary hearings
- Provide technical assistance to department heads/facility directors, associate commissioners, the commissioner and/or HR director regarding various HR related matters
- Announces vacancies and determines if experience and education indicated on applicants meets minimum qualifications
- Confers with supervisors, managers, and other professionals in developing policies, programs, and procedures for effective coordination of HR services
- Schedules and conducts interviews of candidates



ADMH 01-06-00119

Personnel Specialist III  
Continued

- Confers with state personnel, other agencies within or out of state regarding activities as they relate to HR
- Represent HR and serve on various committees as assigned

**Knowledge, Skills, and Abilities:**

- Knowledge of Federal and state Laws, rules, and regulations pertaining to human resource management
- Knowledge of State Personnel policies, rules, and regulations
- Knowledge of Federal rules and guidelines relating to recruitment, selection, and placement
- Knowledge of interviewing and counseling techniques
- Ability to plan, organize, direct, and evaluate the work of others
- Ability to read and interpret various federal and state guidelines and regulations
- Ability to communicate effectively both orally and in writing
- Ability to oversee, supervise, and/or coordinate various HR activities and functions
- Ability to work independently
- Ability to gather, correlate, and analyze facts and recommend solutions
- Ability to meet, interact, and effectively work with supervisors, associates, division heads, employees, state and local officials, and the general public

**Qualifications:**

Graduation from a four-year college or university with a major in human resource management, business administration, public administration or a related field. Must have **extensive** (72 months or more) professional personnel management experience in a state agency or equivalent professional personnel management experience. Must also have **experience** (24 months or more) in a supervisory capacity.

Other directly related education and/or work experience may be substituted for all or part of these basic requirements.

9/06



# APPLICATION FOR EMPLOYMENT

## Exempt Classification



ADDRESS ON ANNOUNCEMENT

**GENERAL INSTRUCTIONS**

Complete all portions of this application that are applicable to you and the position for which you are applying. Failure to do so may result in your not being considered for the position for which you are applying. Type or print clearly in ink.

**AN EQUAL OPPORTUNITY EMPLOYER**Full Name BENSON MARILYN B.Social Security Number XXX-XX-XXXXAddress 1078 16TH PLACEALEXANDER CITY AL. 35010**LOCATIONS**

Your application will be retained in our non-merit recruitment files for one year, and you will be notified of non-merit vacancies at those facilities in which you express an interest. Please indicate below at which of our facilities you would consider employment. You will only be sent announcements of openings at facilities which you check. After one year and after each succeeding year, you will need to contact this office and request that your application remain in our active files and/or submit an updated application. Failure to do so will result in your name being removed from our mailing list and your application will be destroyed.

**Mental Illness Facilities**

- ( ) Bryce Hospital — Tuscaloosa, AL  
 ( ) Searcy Hospital — Mt. Vernon, AL  
 ( ) Harper Geriatric Psychiatry Center — Tuscaloosa, AL  
 ( ) North Alabama Regional Hospital — Decatur, AL  
 ( ) Thomasville MH Rehab Center — Thomasville, AL  
 ( ) Hardin Secure Medical Facility — Tuscaloosa, AL  
 ( ) Grell Psychiatric Hospital — Montgomery, AL

**Mental Retardation Facilities**

- ( ) William D. Partlow Developmental Center — Tuscaloosa, AL  
 ( ) Albert P. Brewer Developmental Center — Mobile, AL  
 ( ) Lurleen B. Wallace Developmental Center — Decatur, AL  
 ( ) J. S. Tarwater Developmental Center — Wetumpka, AL

**ICF Nursing Homes**

- ( ) Alice Kidd — Tuscaloosa, AL  
 ( ) S.D. Allen — Tuscaloosa, AL  
 ( ) Claudette Box — Mt. Vernon, AL

☒ Central Administrative Offices — Montgomery, AL

(See map on last page for locations of facilities)

If you are applying for a specific current vacancy, please give position title and announcement # 05-27

DEPARTMENTAL ASSISTANT  
PERSONNEL MANAGER

Telephone Home: 256 409-1992  
 Number Office: 334 242-3120

Legal Residence ALEXANDER CITY TALLAPOOSA AL

Place of Birth ALEXANDER CITY TALLAPOOSA AL

Minimum annual salary you would consider: NEGOTIABLE

**REFERRAL**

Where did you learn about the job for which you applied, or about the Department's application procedure?

- ☐ Voluntary Walk-in  
☐ State Employment Service  
☐ College Career Day  
☐ DMH/MR Employee  
☐ Newspaper Ad  
☐ Professional Journal Ad  
☐ Radio/TV Ad  
☐ Private Employment Agency  
☐ State Personnel Department  
☐ Professional Convention  
☐ Friend/Relative  
☐ Responded to Announcement of Vacancy  
☐ Other — Please explain:

Plaintiffs' Exhibit  
 67

Are you willing to accept shift work during evening and night hours? Yes ( ) No ☒

Are you available to work ☒ Full Time ☐ Part Time  
☐ Temporary?

The Alabama Department of Mental Health and Mental Retardation is an Equal Opportunity Employer. It does not discriminate with respect to race, color, religion, national origin, gender, age, or disability.

**PLEASE DO NOT OMIT SIGNATURE AND AUTHORITY TO RELEASE INFORMATION BLOCK ON BACK OF APPLICATION**

EDUCATION							
High school graduate or GED? <input checked="" type="checkbox"/> Yes ( ) No		Be as specific as possible about degree and major.					
Type of School	Name and Address	From Mo/Yr	To Mo/Yr	Did You Graduate?	Degree and Date	Major	
College Undergraduate	CENTRAL ALA. COMMUNITY COLLEGE ALEXANDER CITY, AL.	76	78	YES	ASSOCIATE DEGREE	78	
College Undergraduate	AUBURN UNIVERSITY AUBURN, ALABAMA	78	81	YES	BACHELOR'S '81	HOSPITAL/HEALTH ADMINISTRATION	
College Graduate	AUM AT MONTGOMERY, AL.	85	87	YES	MASTER'S '87	PUBLIC ADMINISTRATION	
College Graduate							
Vocational Business							

Circle Highest Grade Completed  
 High School 9 10 11 (12) College 13 14 15 (16) Graduate School 17 (18) 19

If you attended college in pursuit of either an undergraduate or graduate degree and did not obtain such, please indicate how many hours were received toward the degree:  
 Sem. Hrs. \_\_\_\_\_  
 Qtr. Hrs. \_\_\_\_\_

Please include the appropriate transcript with this application where applicable.

Please include copies of professional certificates/license, date, and state issued when applicable:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

EMPLOYER/PROFESSIONAL REFERENCES			
List three reliable persons, not relatives, who know you well enough to give information about your professional/educational background.			
Name	Address/Zip Code	Telephone Number	Occupation
ARMAREHEA BROCK	4212 BEARDSLEY DR. MONTGOMERY, AL 36109	244-9935	RETIRED STATE EMPLOYEE
ETHEL OLDHAM	5739 PINEBROOK MONTGOMERY, AL 36117	274-9806	MICROBIOLOGIST
HENRY ERVIN	100 N. UNION STREET MONTGOMERY, AL	242-3112	HR DIRECTOR DMH/MR

Have you ever been involuntarily terminated or forced to resign from a position? ( ) Yes ☒ No

Have you ever been convicted of a felony or other law violation, other than minor traffic violations during the last seven years? (Conviction will not necessarily disqualify applicant from employment) ( ) Yes ☒ No

If you answered "Yes" to any of the above questions, attach an explanation on a separate sheet.

Have you filed an application with this Department before? ☒ Yes ( ) No. If yes, give date and facility name:  
 Date \_\_\_\_\_ Facility Name \_\_\_\_\_

Are you a citizen of the U.S. or otherwise legally eligible to work in this country? ☒ Yes ( ) No. If not a citizen of the U.S. give Visa type/status \_\_\_\_\_ (Proof of U.S. citizenship or Immigration status will be required upon employment.)

Date when you are available to begin work: IMMEDIATELY



**WORK HISTORY**

THIS SECTION MUST BE COMPLETED REGARDLESS OF WHETHER OR NOT A RESUME IS ATTACHED

Beginning with your PRESENT or most recent employment, list in REVERSE ORDER periods of employment. Each time you changed jobs or your title changed should be listed as a separate period. Describe in detail your specific duties as they relate to the duties of the position for which you are applying. (Attach additional sheets if necessary). Please account for or explain any gaps in employment.

1. Current or Last Employer				Your Official Job Title			
DMH/MR				PERSONNEL SPECIALIST III			
Address/Zip Code				Telephone Number		Type of Business	
100 N. UNION ST.				242-3112			
FROM	TO	Total Months	Fulltime (X) Parttime ( )	Name of Supervisor		Ending Salary	May we contact current employer?
12/87	Current	214	40	HENRY ERVIN		\$ <u>AW</u> per <u>AW</u>	(X) Yes ( ) No
Number/Title of Employees you Supervised			Equipment you Operated		Reason for Leaving		
(2) PERSONNEL ASST II'S (1) ASAI			COMPUTER/FAX/COPIER		N/A		
Describe your Duties in Detail:							
ASSIST IN RECRUITMENT, SELECTION, AND PLACEMENT OF DIRECT CARE, ADMINISTRATIVE, TECHNICAL, AND SERVICE PERSONNEL AT CENTRAL OFFICE, SEVEN FACILITIES, AND FIVE REGIONAL OFFICES.							
PLEASE SEE ATTACHED RESUME FOR DETAILED WORK EXPERIENCE →							

2. Employer				Your Official Job Title			
DMH/MR				PLANNING SPECIALIST			
Address/Zip Code				Telephone Number		Type of Business	
800 INTERSTATE PARK							
FROM	TO	Total Months	Fulltime (X) Parttime ( )	Name of Supervisor		Ending Salary	
8/84	11/87	39		PHILLIP JOHNSON		\$ _____ per _____	
Number/Title of Employees you Supervised			Equipment you Operated		Reason for Leaving		
			COMPUTER		PROMOTION		
Describe your Duties in Detail:							
RENDERED TECHNICAL ASSISTANCE TO COMMUNITY MENTAL HEALTH CENTERS BY CONDUCTING MANAGEMENT STUDIES AND SUPERVISORY TRAINING.							
PLEASE SEE ATTACHED RESUME FOR DETAILED WORK EXPERIENCE →							

3 Employer				Your Official Job Title			
DMH/MR				RESEARCH ASSISTANT			
Address/Zip Code				Telephone Number		Type of Business	
200 INTERSTATE PARK							
FROM	TO	Total Months	Fulltime (X) Parttime ( )	Name of Supervisor		Ending Salary	
8/83	8/04	12	40	INGRAM GOMILLION		\$ _____ per _____	
Number/Title of Employees you Supervised			Equipment you Operated		Reason for Leaving		
N/A			COMPUTER/COPIER		PROMOTION		
Describe your Duties in Detail:							
PROVIDED CONSULTATIVE SERVICES TO COMMUNITY MENTAL HEALTH CENTERS; CONDUCTED INTERVIEWS, WROTE AND AMENDED POLICIES AND PROCEDURES.							
PLEASE SEE ATTACHED RESUME FOR DETAILED WORK EXPERIENCE →							
4. Employer				Your Official Job Title			
NEUROPSYCHIATRY ASSOCIATES				OFFICE MANAGER			
Address/Zip Code				Telephone Number		Type of Business	
OPELIKA + MONTG. OFFICE (PINEST.)						PSYCHIATRIC CLINIC	
FROM	TO	Total Months	Fulltime (X) Parttime ( )	Name of Supervisor		Ending Salary	
1/83	8/84	17		DR. CHESTER JENKINS		\$ 500 per MO.	
Number/Title of Employees you Supervised			Equipment you Operated		Reason for Leaving		
			COMPUTER/COPIER		MOVED		
Describe your Duties in Detail:							
COORDINATED OFFICE FUNCTIONS FOR PSYCHIATRIC CLINIC.							
→ PLEASE SEE ATTACHED RESUME →							

### AUTHORITY TO RELEASE INFORMATION

TO WHOM IT MAY CONCERN: I hereby authorize the Security Division or Personnel Office of the Alabama Department of Mental Health/Mental Retardation bearing this release or copy thereof, within one year of this date, to obtain any information in your files pertaining to my previous employment, educational records and/or transcripts, licenses, certifications, or conviction records. I hereby authorize you to release such records or information upon the request of the bearer of this release document. The information you supply will be used principally as a basis for an investigation to determine my qualifications for employment with the Alabama Department of Mental Health/Mental Retardation. I hereby release you as custodian of such records from any and all liability damages which may result to me, my heirs or family because of compliance with this authorization and request to release information, or any attempt to comply with it. Should there be any question as to the validity or authenticity of this release, you may contact me as indicated below.

FULL NAME (No initials)	<u>Marilyn Benson</u>	SOCIAL SECURITY #	<u>XXX-XX-XXXX</u>
FULL NAME (Typed or Printed Name)	<u>MARILYN B. BENSON</u>	CURRENT ADDRESS	<u>1078 16th Place</u>
DATE OF BIRTH	<u>7/18/59</u>	PLACE OF BIRTH	<u>TALLAPOOSA CTY. Alexander City, AL.</u>
WITNESS	<u>[Signature]</u>	TITLE	<u>Director, PD Council</u>
		DATE	<u>9/29/05</u>

### CERTIFICATE/SIGNATURE

Must be signed in ink by applicant

I certify that all statements on or attached to this application are true and correct to the best of my knowledge. I understand that any false statements may cause me to be refused the opportunity of employment or cause my employment to be immediately terminated without recourse to due process or protection provided by law.

Signed	<u>Marilyn Benson</u>	DATE	<u>9/29/05</u>
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2/01

## ALABAMA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

## APPLICANT DATA RECORD

DATE: 9/27/05

To help this Department evaluate our efforts as an Equal Opportunity Employer, we are requesting that you complete the following items of personal information. Your answers to these questions will be used only to study recruiting and employment patterns, and to furnish necessary information for government reports. We appreciate your cooperation.

This sheet will be separated from the employment application upon receipt, and will be maintained in a separate file. It will, in no way, affect consideration for possible employment with the Alabama Department of Mental Health and Mental Retardation.

PLEASE PRINT

NAME BENSON MARILYN B.  
Last First Middle

ADDRESS 1078 16TH PLACE ALEXANDER CITY AL. 35010  
Street City State Zip Code

SOCIAL SECURITY NUMBER [REDACTED]

TITLE OF POSITIONS APPLIED  
FOR AND DATE APPLIED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RACE:

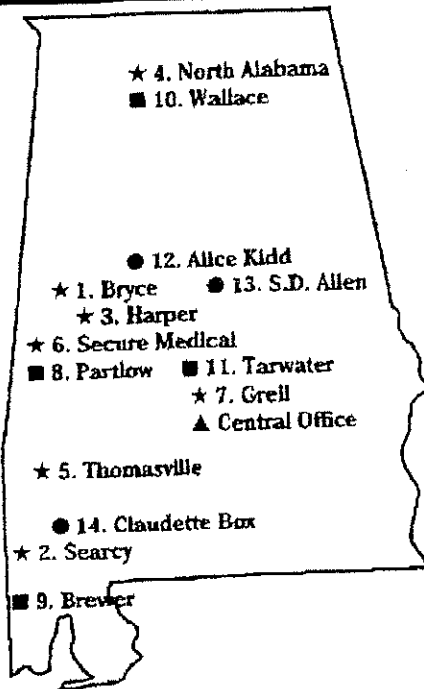
- ( ) Caucasian (X) Black  
( ) American Indian ( ) Asian/Pacific Islander  
( ) Hispanic ( ) Non-Resident Alien  
( ) Other \_\_\_\_\_

GENDER: ( ) Male (X) Female

AGE: 46 Birthdate 7/18/59

VETERAN: ( ) Yes (X) No

# STATE FACILITIES



## ★ MENTAL ILLNESS FACILITIES

1. Bryce Hospital — Tuscaloosa, AL
2. Searcy Hospital — Mt. Vernon, AL
3. Harper Geriatric Psychiatry Center — Tuscaloosa, AL
4. North Alabama Regional Hospital — Decatur, AL
5. Thomasville MH Rehab Center — Thomasville, AL
6. Hardin Secure Medical Facility — Tuscaloosa, AL
7. Greil Psychiatric Hospital — Montgomery, AL

## ■ MENTAL RETARDATION FACILITIES

8. William D. Partlow Developmental Center — Tuscaloosa, AL
9. Albert P. Brewer Developmental Center — Mobile, AL
10. Lurleen B. Wallace Developmental Center — Decatur, AL
11. J. S. Tarwater Developmental Center — Wetumpka, AL

## ● ICF NURSING HOMES

12. Alice Kidd — Tuscaloosa, AL
13. S.D. Allen — Tuscaloosa, AL
14. Claudette Box — Mobile, AL

## ▲ CENTRAL ADMINISTRATIVE OFFICES — Montgomery, AL

CONTINUE ON TO BACK PAGE

PLEASE DO NOT OMIT SIGNATURE AND AUTHORITY TO RELEASE INFORMATION BLOCK ON BACK OF APPLICATION

SEP 29 2005 12:16 FR DMH-MR HUMAN RESOURCE334 242 3144 TO 812055544130 P.08/12

ADMH 04-00197

**Marilyn B. Benson**

1078 16<sup>th</sup> Place  
 Alexander City, AL 35010  
 Home: (256) 409-1992 Cell: (334) 303-4134

**EDUCATION**

- 1987 Master's Degree in Public Administration  
 (Concentration in Personnel)  
 (Auburn University at Montgomery)
- 1981 Bachelor's Degree in Health Services Administration  
 (Auburn University, Auburn, AL)

**EMPLOYMENT**

- 12/87- Personnel Specialist, Alabama Department of Mental Health/Mental  
 Present Retardation, Montgomery, Alabama

Assists with coordinating Personnel management activities for DMH/MR Central Office, seven facilities, and five Community Programs throughout the state. Responsibilities include coordinating recruitment, selection, and placement of direct care, administrative, technical, and service personnel. Responsibilities include examining positions, establishing, revising, deleting, combining classes, and making recommendations in order to comply with federal, state, and local guidelines of employment; also coordinate wage and salary information for non-merit classes, conduct surveys, analyzing positions and pay relationships, collecting, and ensuring the Department remains competitive in its development of solid wage, salary, and benefit schedules; attend career fairs and conventions to recruit the most qualified individuals to fill vacancies, conduct job analysis, gather subject matter experts, announce job vacancies, develop KSA's and conduct interviews. Other responsibilities include supervising and evaluating the work of clerical and technical support staff. Also provide technical assistance to department heads, and supervisors regarding personnel related matters on departmental employees. Responsible for carrying out functions of Human Resource Management in the absence of the Director.

- 08/84- Planning Specialist, Alabama Department of Mental Health/Mental  
 11/87 Retardation, Montgomery, Alabama

Rendered technical services to mental health centers by conducting personnel and management studies to include developing complete personnel action plans. Conducted interviews with employees, developed and revised job descriptions. Also examined current classification system to determine if employees were appropriately classified. Developed policies and procedures, to include recruitment and affirmative action plans. Also responsible for conducting supervisory training for both performance appraisals and the employee assistance program; Assisted with identifying federal funding availability through grant resources and provided technical assistance by compiling information needed in order to meet deadlines.

Marilyn B. Benson  
Page 2

08/83- Research Assistant, Alabama Department of Mental Health/Mental  
08/84 Retardation, Montgomery, Alabama

Provided consultative services to various mental health centers throughout the state of Alabama. Responsible for writing, revising, and coordinating the development of various personnel policies and procedures, conducting performance appraisal training sessions and supervisory training for the Employee Assistance Program.

01/83- Office Manager, Neuropsychiatry Associates, Montgomery, Alabama  
08/84

Supervised the overall operation of a psychiatric clinic. Was responsible for maintaining financial reports, accounts receivable, purchasing of supplies and equipment, client billing, processing insurance claims, purchase orders, as well as the supervision to clerical and technical support staff.

### HUMAN RESOURCE TRAINING ACTIVITIES & EXPERIENCE

- Developed performance appraisal systems and conducted management studies for seven different Mental Health Centers in five locations throughout the state of Alabama.
- Activities included:

- 1) Disseminating questionnaires
- 2) Conducting interviews
- 3) Reviewing job descriptions
- 4) Compiling draft descriptions
- 5) Providing overview of Performance Appraisal System
- 6) Training of Supervisors
- 7) Project Implementation

July 1983, Central Alabama Comprehensive Health Center, Tuskegee, AL  
Developed Performance Appraisal Instrument to be utilized and incorporated into their supervisory training program.

October 1983, Jefferson Blount-St. Clair County Mental Health Center, Birmingham, AL  
Established a Performance Appraisal Project Flow for JBS. Trained supervisors in the overview of the Performance Appraisal Instrument and legal implications by conducting interviews with employees; writing job descriptions and task statements.

Jan-March 1984, Chilton-Shelby Mental Health Center, Calera, AL  
Established Performance Appraisal Training Program for Center Supervisors by reviewing existing appraisal instrument, establishing weights for Primary Job Functions, conducting appraisal interviews, and providing instructions for scoring appraisals.

April 1984, Mobile Community Mental Health Center, Mobile, AL  
Administered Employee Attitude Surveys in order to recognize employee attitudes or problems that may have a bearing on productivity, absenteeism, turnover, and Other related employee issues. After correlating and compiling data,



Marilyn B. Benson  
Page 3

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recommendations were made for improving overall staff morale and motivation.

May 1984, Mobile Community Mental Health Center, Mobile, AL  
Established Performance Appraisal Instrument to be used at the Center. Trained supervisors in performance appraisal techniques and utilization.

August 1984, Mobile Association for Retarded Citizens, Mobile, AL  
Analyzed current organizational structure by disseminating questionnaires and conducting interviews to determine whether jobs were appropriately classified and made recommendations accordingly.

August 1984, Cahaba Regional Mental Health Center, Selma, AL  
Developed a performance appraisal system for supervisors at the Center. Interviewed employees, compiled questionnaires and conducted supervisory training.

September 1984, Cherokee, Etowah, Dekalb County Mental Health Center, Gadsden, AL  
Participated in Staff Development Consultation with supervisors of Cherokee, Etowah, Dekalb County Mental Health Facility to implement a Performance Appraisal System.

September 1985, The Bridge Alert Center, Gadsden, AL  
Conducted workshop on FES (Factor Evaluation System) training and utilization of Training and Experience Crediting. Supervisors were trained in the area of job analysis. The information was utilized in developing more accurate position descriptions.

October 1985, Northwest Alabama Mental Health Center, Jasper, AL  
Developed a complete Personnel Action Plan by reviewing selection procedures, staff recruitment, evaluation of policies, and providing FES training for supervisors.

#### EMPLOYEE ASSISTANCE PROGRAM TRAINING AND EXPERIENCE

This training involved visiting various Community Mental Health Centers, State Facilities, and private Industries to provide technical assistance in areas as: 1) Marketing presentation, 2) Specific employee problems, 3) Program design, 4) Program problem resolution, 5) Contract negotiations, and 6) Management Training.

August 1985, Cahaba Mental Health Center, Selma, AL  
Conducted training workshops to educate supervisors about the Employee Assistance Program, what it involved, who was eligible and the role they played.

September 1987, Auburn University, Auburn, AL  
Conducted 15 supervisory training sessions that included 219 participants to include the President and Vice-President of the University. Supervisors were acquainted with troubled employees, how to recognize them and the roles they were responsible for playing in the referral process.



\*\* TOTAL PAGE 12 \*\*

Marilyn B. Benson  
Page 4

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October 1987, Alabama Criminal Justice Information Center, Montgomery, AL.

Conducted a one-day workshop for supervisors by giving an overview of the program, identification of problem employees, and the referral process.

November 1987, Fourth Annual Conference for Personnel Administration, Auburn University at Montgomery, Montgomery, AL

Made Conference presentation on the Employee Assistance Program for Participants of the Personnel Administration Conference. An overview of EAP was given as well as how to identify workers with personal problems that could possibly affect their on the job performance.

#### PROFESSIONAL ACTIVITIES

- Facilitator/planner for Governor's Task Force on Domestic Violence and Abuse
- Licensed and Ordained Baptist Minister
- Co-Pastor of GAP Fellowship Church, Inc in Alexander City, AL

#### REFERENCES

Available Upon Request

(DEPARTMENTAL)  
ANNOUNCEMENT OF INTENT TO FILL A NON-MERIT POSITION  
EQUAL OPPORTUNITY EMPLOYER

<b><u>JOB TITLE:</u></b>	Departmental Assistant Personnel Manager	<b><u>NUMBER:</u></b>	05-27
<b><u>JOB CODE:</u></b>	H5500	<b><u>DATE:</u></b>	5/27/05
<b><u>SALARY RANGE:</u></b>	80 (\$44,171- \$67,340)	<b><u>POS#:</u></b>	8813339
<b><u>JOB LOCATION:</u></b>	Department of Mental Health And Mental Retardation 100 North Union Street Montgomery, Ala. 36130		

**QUALIFICATIONS:** Graduation from a four-year college or university with a Bachelor's degree in Personnel Management, Business Administration, Public Administration, or related field. Extensive experience (over 72 months) in professional personnel management plus experience (24 months) in supervision.  
*Preference will be given for Master's degree in the above specified fields of study.  
Other job-related education and/or experience may be substituted for all or part of these basic requirements upon approval of the Job Evaluation committee.*

**KIND OF WORK:** Assists with day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program for the Department of Mental Health and Mental Retardation. Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action. Research and identify grant funding sources to assist coordinating efforts regarding Wage and Classification Studies. Maintains on-going classification and pay information from governmental agencies and private sector. Advises Director of Human Resources and assists in making recommendations to department heads, administrators, supervisors, and employees on rules, regulations, and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals. Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings. Gathers information and prepares budget for the Central Office Personnel Division and monitors expenditures. Coordinates various supervisory training for departmental Personnel Officers and makes oral presentations as needed.



ADMH 08-00015

Departmental Assistant  
Personnel Manager  
#05-27  
Page 2

Serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions and serves on various committees and task forces as assigned. Supervises professional and non-professional staff assigned to Human Resources and conducts performance evaluations.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:** Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations. Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development. Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and ability to interpret state and federal legislation. Ability to plan, organize, direct, and evaluate the work of others. Thorough knowledge of interviewing and counseling techniques. Ability to make presentations and convey ideas and opinions effectively, both orally and in writing. Ability to gather, correlate, and analyze facts, and recommend solutions. Ability to provide technical assistance in the area of expertise. Ability to research and identify funding resources. Ability to conduct and coordinate various meetings and chair committees. Ability to establish and maintain effective working relationships with departmental personnel at all levels and with employees in other departments as well as the general public.

**METHOD OF SELECTION:** Applicants will be rated on the basis of an evaluation of their training, experience and education, and should provide adequate work history identifying experiences related to the duties and minimum qualifications mentioned above. All relevant information is subject to verification.

**HOW TO APPLY:** Use an official application for Professional Employment (Exempt Application), which may be obtained from this office, other Department of Mental Health and Mental Retardation facility Personnel Offices, or at [www.mh.state.al.us](http://www.mh.state.al.us). **Only work experience detailed on the application form will be considered.** Additional sheets, if needed, should be in the same format as the application. **Resumes will not be accepted in lieu of an official application.**

The application should be returned to *Central Office Personnel: Alabama Department of Mental Health & Mental Retardation P.O. Box 301410, 100 North Union Street, Montgomery, Ala. 36130-1410, JUNE 24, 2005* in order to be considered for this position. **COPIES of licenses/certifications if applicable should be forwarded/furnished during interview, an official copy of your academic transcripts must be forwarded by the college or university to the personnel office at the above address.**

DEPARTMENT OF MENTAL HEALTH / MENTAL RETARDATION  
APPLICATION EVALUATION FORM

Marilyn Benson Departmental Assist Personnel Mgr / H5500 05-27  
 Applicant Name Position Title / Job Code Announcement #  
9/30/05 9/29/05 8813339  
 Closing Date Date Received Positions #  
10/5/05 M. Mathis  
 Date Evaluated Rater's Name

**MINIMUM QUALIFICATIONS REQUIREMENTS FOR POSITION****Qualification:**

**Applicant's Training / Education:** Meets Requirements yes  
 Bachelor's degree in Human Resource Management / Personnel Management, Business Administration, Public Administration, or related field.

**Applicant's Experience:** Meets Requirements yes  
 Extensive (72 months or more) working in a professional personnel management position, plus experience (24 months or more) in a supervisory capacity.

**Licensure / Certification:** Meets Requirements N/A Date Verified \_\_\_\_\_

**Special Requirements:** Meets Requirements N/A Date Verified \_\_\_\_\_

**Meets Minimum Qualification Requirements:** yes

**Preference Will Be Given To Individuals With:**

- Master's degree in any of the above specified fields of study.
- Work experience in the governmental / public sector.
- Work experience in a healthcare setting.

**Meets Minimum Qualification Requirements (1 point)** 1

**Additional Specific / Related Education (2 points)** 2

Required Degree BS yes Additional Related Degree MS yes

**Additional Specific / Related Experience (5 points)** 5

Total Related Experience – Required Experience = Additional Related Experience (/12)

One Point For Each Full Year of Additional Related Experience Up to Maximum of 5

**Preference Points** 2

Work experience in preferred area: 1 to 5 years = 1 point 6 to 10 years = 2 points

MS Degree = 2 points

**OVERALL RATING:** 10

**Interview:** Date: \_\_\_\_\_ Time: \_\_\_\_\_



ADMH 04-00190

CLASS TITLE: Dept Assist Personnel Mgr CODE: H 5500NAME: Marilyn BensonDEGREE SUBJECT: BS - Hos/Health Admin MS - Public AdminDEGREE LEVEL / DATE RECEIVED: BS/81 MS/87TOTAL QUALIFIED, POST DEGREE WORK EXPERIENCE: ~~214 M~~ 214 M

PROFESSIONAL LICENSURE: \_\_\_\_\_

WORK EXPERIENCE WORKSHEET:1.) QUALIFIED = Y - N YRS/MON = 214 M Personnel Spec IIIDMH/MR CO 12/87 - Current  
(assists coor of Personnel Mgmt activities for DMHCO,  
facilities & Com Programs in state -)2.) QUALIFIED = Y - N YRS/MON = 39 8/84 - 11/87DMH/MR CO Planning Spec  
Conducted Mgmt studies & super training3.) QUALIFIED = Y - N YRS/MON = \_\_\_\_\_4.) QUALIFIED = Y - N YRS/MON = \_\_\_\_\_5.) QUALIFIED = Y - N YRS/MON = \_\_\_\_\_

georgia.gov

[PRINT](#) [CLOSE](#)

### Human Resources Director

**Announcement Number :** KP08002**Job Openings:** 1**Contact Information:** kpfirman@gta.ga.gov

We currently have a challenging and exciting opportunity for a visionary Human Resources Director who plans, develops, and directs human resources-related programs and activities for the authority in accordance with our policies, procedures, and values. This position reports to the Chief Administrative Officer. Send resumes to kpfirman@gta.ga.gov or Kate Pfirman, Chief Administrative Officer, 47 Trinity Avenue, 6th Floor, Atlanta, Georgia 30334.

### Position Profile

This is an incredible opportunity to:

- Develop human resources goals and implement programs that anticipate and meet the needs of the Authority;
- Develop short- and long-term business plans that maximize the human capital investment for the Authority, including organizational development planning, succession planning, competency modeling, career mapping, and reward systems.

The successful candidate will be an accomplished individual with excellent leadership and strategic management skills who can work in a diverse environment. We are looking for a high-energy contributor with proven ability to foster and support a culture and environment that promotes personal growth and development of team members. This position requires an individual with a successful track record of meeting specific business objectives and performance metrics, and a multi-dimensional thinker who can think strategically and manage tactically.

### Key responsibilities of this position include:

- Developing proactive change management plan as GTA transforms from an organization that delivers services to an organization that manages service delivery
- Serving as an advisor on human resource issues to senior leadership and managers
- Recommending and communicating human resources goals and objectives
- Directing the administration of the human resources function, including compensation planning and administration, recruitment and retention, benefit programs, employee development and training, performance assessment, safety and labor law compliance, and employee communication/services
- Developing human resources staffing plans and models which identify competencies, knowledge and talent needs and implements specific programs that maximize efficiency and productivity
- Directing the analyses of current design and effectiveness of variable pay plans within the Authority
- Developing and implementing consistent plans and policies that attract and retain top talent
- Developing a comprehensive succession planning program for appropriate people and positions; this includes the development and administration of an effective recruiting program

- Developing a workforce retention program
- Directing the creation of a comprehensive orientation and training program for management personnel on a wide variety of topics
- Represent GTA on State of Georgia human resource committees

**Required Personal Characteristics**

- High integrity and honesty
- Highly collaborative, with strong interpersonal and skills
- Ability to motivate and educate employees, build organizations and lead change
- Ability to develop people, build organizations and lead change
- Strong commitment to providing superior customer service to both internal and external customers
- Ability to implement an organizational vision
- Ability to plan, prioritize, and coordinate large, complex programs
- Ability to establish positive relationships with and influence others

**Minimum Qualifications**

- Bachelor's degree in human resources management or a related field or equivalent work experience
- At least seven years generalist experience, including leadership development, performance management, workforce planning, succession planning, recruiting/retaining high tech professionals, change management, and business practices relating to human resources functions
- 3 years in a management or director-level position

**Preferred Qualifications**

- Masters degree in business, public administration, organizational science, industrial psychology or a related field
- Previous director of a human resources team in an organization with at least 500 employees
- Experience in a dynamic change environment where the organization went through an entire lifecycle of transformation in structure, job design, or work culture
- Certification in any human resource curriculums (i.e. SHRM or IHRM)





# STATE OF TENNESSEE

## DEPARTMENT OF HUMAN RESOURCES

### CLASS SPECIFICATION

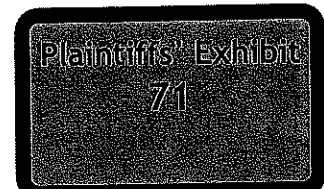
Class Title: <b>HUMAN RESOURCES MANAGER 2</b>			Abbreviation: <b>HR MGR 2</b>
Class Code: <b>73715</b>	OCC Code: <b>7</b>	Analyst: <b>RR</b>	Effective Date: <b>DECEMBER 1, 2006</b>

**SUMMARY:** Under general supervision, is responsible for professional general human resources analytic work of considerable difficulty and supervisory work of routine difficulty; and performs related work as required.

**DISTINGUISHING FEATURES:** An employee in this class has supervisory responsibility for the work of other professional human resources staff and performs work such as may relate to acting as full assistant human resources director in the largest of operating departments with the most complex of human resources systems. This class differs from that of Human Resources Manager 1 in that an incumbent of the latter acts as a full assistant human resources director in a moderate to large sized operating department or acts as an assistant manager for a central human resources function. This class differs from higher level classes in the human resources management and related series in that incumbents of the latter perform duties of greater scope and complexity.

#### EXAMPLES OF DUTIES AND RESPONSIBILITIES

1. Assists the human resources director of the largest and most complex of operating departments in executing the human resources management function for the department; assists director of a substantial central statewide human resources function in executing the particulars of the function; duties in this area may relate to assignments such as development and guidance in the maintenance of the classification plan and the conduct of major studies of organizational analytic, organizational development, and general human resources administrative nature, or to the general maintenance of the classification and compensation plan, or to the recruitment, career counseling, testing, and certification of applicants and eligibles, or to the development of an overall employee relations function.
2. Assigns, trains, supervises, and evaluates subordinate staff and their work; makes recommendation on human resources actions such as employment, promotion, demotion, transfer, retention, and increases for outstanding performance.
3. Carries out, explains, interprets, coordinates, and enforces existing intra-unit policy and methods and assists in the origination and development of inter-unit policy and methods in the operating department assignment, or assists director of major statewide staff function in developing and carrying out policy and methods.



(NOTE: Class Specifications are descriptive only and not restrictive; they shall not be construed as declaring the extent or what the duties and responsibilities shall be, or as limiting in any way modifying the power of the appointing authority to assign duties or to direct or control all employees under his/her supervision, the typical tasks shall not be held to exclude others not mentioned that are of similar kind or quality)



# STATE OF TENNESSEE

## DEPARTMENT OF HUMAN RESOURCES

### CLASS SPECIFICATION

Class Title: <b>HUMAN RESOURCES MANAGER 2</b>	Abbreviation: <b>HR MGR 2</b>
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Page 2

4. Has considerable responsibility for public contact and liaison work in making regular contacts in situations involving the meeting and dealing with persons of substantially high rank, requiring explanation and interpretation of specialized matters and in obtaining desired action and/or in handling difficult personal relationships.

5. Supervises the preparation and maintenance of a large volume of standard operating human resources records; supervises the preparation and maintenance of highly specialized and technical records and reports.

6. Performs difficult, detailed, and complex staff studies in any area of human resources and in general management and prepares completed staff work reports with recommendations for action which are workable and comply with professional standards of excellence; applies standard human resources, management, and administrative methods and techniques, which necessitate formulation of the problem, collection of all necessary data, analysis of data using standard statistical and other techniques, formulation and evaluation of possible solutions, and recommendations for action using the best alternate solution.

#### MINIMUM QUALIFICATIONS

**Education and Experience:** Graduation from an accredited college or university with a bachelor's degree and experience equivalent to substantial (five or more years of) increasingly responsible and varied full-time professional human resources work; qualifying full-time professional human resources experience may be substituted for the required education, on a year-for-year basis, to a maximum of four years; additional graduate coursework in human resources administration or other related acceptable field may be substituted for the required experience, on a year-for-year basis, to a maximum of two years; OR four years of increasingly responsible professional general human resources experience with the State of Tennessee.

**Necessary Special Qualifications:** None.

**EXAMINATION METHOD:** Education and Experience, 100%, for Career Service positions.



# STATE OF TENNESSEE

## DEPARTMENT OF HUMAN RESOURCES

### CLASS SPECIFICATION

Class Title: <b>HUMAN RESOURCES DIRECTOR 1</b>			Abbreviation: <b>HR DIR 1</b>
Class Code: 73751	OCC Code: 8	Analyst: SG	Effective Date: <b>DECEMBER 1, 2006</b>

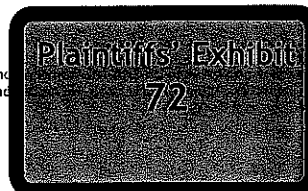
**SUMMARY:** Under direction, performs professional general human resources analytic work of considerable difficulty and supervisory work of average difficulty in directing all human resources related activities for a very large remote site or for a moderate sized department with a moderately complex personnel system; and performs related work as required.

**DISTINGUISHING FEATURES:** This is the first level in the Human Resources Director sub-series. Characteristic of classes in this sub-series is the management of all human resources operations within a significant human resources system. Incumbents in this class direct all human resources activities at large state institutions such as the main prison, mental health institutes and developmental centers, and moderate-sized agencies or departments with moderately complex human resources systems. This class differs from Human Resources Director 2 in that incumbents of the latter direct human resources operations for moderate-sized departments or agencies with complex human resources systems.

#### EXAMPLES OF DUTIES AND RESPONSIBILITIES

1. Directs the human resources management function for the largest of state institutions or for moderate-sized departments or agencies with moderately complex human resources systems; manages human resources functions such as position classification, position control, special recruitment, interviewing and selection of applicants for employment, affirmative action, career planning, career development, training, employee relations, safety, performance evaluation, and human resources transactions; personally handles the more difficult human resources analytic work occurring in the organization.
2. Assigns, trains, supervises, and evaluates subordinate professional and other staff and their work; makes recommendations and decisions on human resources actions such as employment, promotion, demotion, transfer, retention, and performance increases; gives guidance and advice to subordinates on technical matters.
3. Coordinates the explanation, interpretation, and enforcement of pertinent policies and procedures for the organization; supervises and participates in studying policies and methods and making recommendations for changes where warranted; participates in studying organization, operations, and services and making recommendations for improvements in economy, efficiency, and quality or organization, operations, and services; gives guidance and advice to operating units on human resources

(NOTE: Class Specifications are descriptive only and not restrictive; they shall not be construed as declaring the extent or what the duties and appointing authority to assign duties or to direct or control all employees under his/her supervision, the typical tasks shall not be held to exclude



may modifying the power of the quality)

PR-0018 (REV. 1-86)



# STATE OF TENNESSEE

## DEPARTMENT OF HUMAN RESOURCES

### CLASS SPECIFICATION

Class Title: <b>HUMAN RESOURCES DIRECTOR 1</b>	Abbreviation: <b>HR DIR 1</b>
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Page 2

matters to assure consistency and equity for all employees; personally performs general staff analytic work in any area of human resources management as assigned.

4. Supervises and participates in leave, attendance, and deductions portion of the payroll function and, as assigned, may direct the payroll function for the organization; assists in preparing personal services portion of the budget; monitors training funds usage by assuring that requests for out-service training are proper and consistent with established policy and procedure.

5. Meets and confers with all levels of employees and officials in the organization on human resources matters in order to provide explanation and interpretation, to obtain desired results, and to handle difficult personal relations; acts as liaison to central human resources units; performs as liaison and confers with other human resources directors and central human resources in assuring a consistent and proper human resources management system for the state service.

6. Supervises and participates in preparing a large volume and variety of human resources records and reports.

#### MINIMUM QUALIFICATIONS

**Education and Experience:** Graduation from an accredited college or university with a bachelor's degree and experience equivalent to substantial (five or more years of) full-time increasingly responsible professional staff administrative and/or analytic work including at least, one year of human resources work; qualifying full-time professional experience may be substituted for the required education, on a year-for-year basis, to a maximum of four years; additional graduate coursework in human resources administration or other related acceptable field may be substituted for the required non-specialized experience, on a year-for-year basis, to a maximum of two years; OR four years of full-time increasingly responsible professional staff administrative and/or analytic work including at least, one year of human resources experience with the State of Tennessee.

**Necessary Special Qualifications:** None.

**EXAMINATION METHOD:** Education and Experience, 100%, for Career Service positions. For Executive Service positions, Minimum Qualifications, Necessary Special Qualifications, and Examination Method are determined by the appointing authority.

**Job Evaluation Committee Meeting  
January 22, 2004**

**Members present:** Kent Hunt (Substance Abuse Division), John Houston (Commissioner's Office), Kim Ingram (MI Division), and Paul Bisbee (MI Division). Eranell Wilson (MR Division) and Judith Johnston (MR Division) attended via telephone conference.

The meeting was called to order by Henry Ervin, Chairman. The following item was submitted for approval:

**Item:** Request substitution of experience for the required Master's degree to appoint Erika Horn as Mental Health Specialist II (Searcy Hospital).

Ms. Horn's application indicated that she holds a Bachelor's degree in Psychology and has six month's directly-related mental illness experience in her current position as an Advocate with DMH/MR, in addition to forty-six month's experience in substance abuse.

The request was passed by a unanimous vote.

Mr. Ervin advised the committee that previous meeting agenda items (such as Nursing and Pharmacist salaries) would be addressed at the next meeting of the committee which is tentatively scheduled for March.

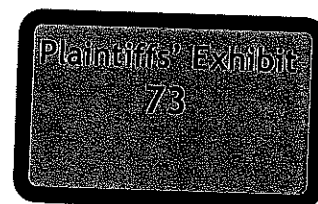
The meeting was then adjourned.

Minutes Submitted By  
Lynn Hubbard

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Approved By  
Henry E. Ervin

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**Job Evaluation Committee Meeting  
February 12, 2004**

**Members present:** Kent Hunt (Substance Abuse Division), Kim Ingram (MI Division), and Paul Bisbee (MI Division). Eranell Wilson (MR Division) and Judith Johnston (MR Division) attended via telephone conference. John Houston (Commissioner's Office) reviewed the proposal and voted in absentia.

The meeting was called to order by Henry Ervin, Chairman. The following item was submitted for approval:

**Item:** Proposed range increase for pharmacist classifications:

	<u>From</u>	<u>To</u>
MH Pharmacist I	Range 79	Range 81
MH Pharmacist II	Range 81	Range 83

Pharmacists currently employed by the Department would be placed in the appropriate step within the new range with no increase in salary and no budgetary impact.

The request was passed by a unanimous vote.

Mr. Ervin advised the committee that the next range increase to be considered would be for nurse classifications.

The meeting was then adjourned.

Minutes Submitted By  
Lynn Hubbard

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Approved By  
Henry E. Ervin

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ADMH 01-07-00055



Minutes of the  
Job Evaluation Committee

April 20, 2004

On April 20, 2004, a meeting of the Job Evaluation Committee was called in the MR Conference room.

Members in attendance were:

Eranell McIntosh-Wilson  
Judith Johnston  
Kim Ingram  
Paul Bisbee  
John Houston  
Kent Hunt  
Henry Ervin

**Item #1:** A request was submitted from David Bennett (Bryce Hospital) to the Committee for increasing the salary ranges for Pharmacists.

It was noted that the recent March 10<sup>th</sup> increase was not sufficient enough to attract new hires. Current graduates are entering the job market at an average salary of \$91,000.

The proposed range increase was:	Pharmacist I	84
	Pharmacist II	86

Henry mentioned that the Committee must also keep in mind the impact that this may have on the ranges for Dentists and Physicians.

A vote was taken and the item passed unanimously.

**Item #2:** Review the proposed recommendations for contracting with nurses.

Kim Ingram expressed her concern about what would happen to her current RN IV's in the system if the Nurse Practitioner position was approved. She recommended that a RN VI be established for the Director of Nursing. Her point was that the RN IV's have the same credentials as the Nurse Practitioner.

It was requested that the specialties of Neurology and Pediatrics both be included on the original proposal.

Kim Ingram suggested that the financial impact be explored before moving the RN IV's into the V classification. She stated that she could have the amount impacting her division by tomorrow morning.



Minutes of the  
Job Evaluation Committee

April 27, 2004

The meeting of the Job Evaluation Committee was called to order by Chairman Ervin in the MR Conference room.

Members in attendance were:

Eranell McIntosh-Wilson  
Judith Johnston  
Kim Ingram  
Paul Bisbee  
Henry Ervin

Members absent were:

Kent Hunt  
John Houston

There was review and discussion of the recent salary survey conducted at various hospitals within the state.

Henry Ervin informed the JEC Committee that the Commissioner asked him to chair a Personnel task force to evaluate the scope and complexity of the duties for the entire Nursing series that would substantiate the recommended increase in range. Recommendations would be made within the next 30 days.

The Committee agreed not to vote on the Nursing recommendations until after Mr. Ervin's Committee has had an opportunity to make recommendations to the Commissioner.

It was also recommended that we look at southeastern states that are closely similar to our organizational structure.

The meeting was adjourned with a follow-up meeting scheduled for June 2, 2004.

Minutes Submitted By:  
Marilyn B. Benson

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Approved By:  
Henry E. Ervin

Minutes of the  
Job Evaluation Committee

June 3, 2004

The meeting of the Job Evaluation Committee was called to order by Chairman Ervin in the MI/ Substance Abuse Conference Room.

Members in attendance were:

Eranell McIntosh-Wilson  
Judith Johnston  
Kim Ingram  
Charles Day for (Paul Bisbee)  
Otha Dillihay  
Henry Ervin

Members absent were:

Kent Hunt  
John Houston  
Paul Bisbee

**Item #1** Review of the Nursing Task Force Committee findings by Mr. Ervin. Ms. Ingram shared her concerns regarding the third item listed under the "Conclusion" section which stated the RN I position on Bryce Infirmary and Adolescent Unit being appropriately classified. Because of the special needs that clients in the Adolescent Unit have, she felt like the two jobs could not be compared at all.

Mr. Ervin explained that these findings were as a result of the evaluation done by Committee members utilizing FES. He suggested that Ms. Ingram discuss her concerns with Dr. Danielle Vinzant to get a clearer picture of the reasoning. Ms. Ingram recommended that the new salary range for DON's go to an 83. Her reasoning being that they supervise over 400 people, co-sign for the Physician and literally are responsible for running the hospital.

Ms. Wilson expressed her concern about the complexity of her RN's only being responsible for residential services; whereas under the MI system, the DON literally runs the hospital. She was not in agreement with the DON salary range at Partlow being raised to the 83 level. She went on to state that her DON only supervised about 100 people and the scope and complexity of the position was not the same.

The Recommendations to the Commissioner were as follows:

- Two levels of Nurses were identified
  - 1) One supervising all Practitioners and Nurses
  - 2) One supervising Nursing Services Only

There was a question raised about individuals in the same classification conducting evaluations on each other. Ms. Ingram said that there were Nurse II's supervising other II's at her facilities.

Mr. Ervin suggested that the specifications be re-written to more accurately reflect work being done. In addition, give an option on the actual announcement.

It was motioned and seconded that the salary information be accepted for contract nurses and a new RN VI classification be established for Bryce and Searcy. All other DON's in the MI system currently classified as RN IV's will move to the RN V classification.

The Committee was also in agreement with the Commissioner's recommendation that the Nursing Task Force also be responsible for reviewing and re-writing job specifications for the entire Nursing Series.

**Item #2** Requested substitution of experience for the required degree on Ms. Schwanna Stidman as a Planning & Quality Assurance Specialist III (North Ala. Regional). She possesses over 15 years of directly related experience. The item passed with a unanimous vote.

Mr. Ervin gave a status report on the request to increase ranges for the Pharmacists. The information was sent to the Finance Director for his approval, however, because of the recent increase given, it was sent to State Personnel for them to review.

The meeting was then adjourned.

Minutes Submitted By:  
Marilyn B. Benson

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Approved By:  
Henry E. Ervin

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MINUTES OF THE JOB EVALUATION COMMITTEE

June 17, 2004

On June 16, 2004 one item of consideration was presented before the Job Evaluation Committee. In lieu of a "called meeting," each member was contacted in regards to substitution of experience for the required degree on an Administrator III position at Partlow.

Qualifications for the position are as follows: Graduation from a four-year college or university supplemented by graduate work to the level of a master's degree in area of specialization. Experience in the mental health field, including progressively responsible supervisory or administrative experience related required.

Other job-related education and/or experience may be substituted for all or part of these basic requirements upon approval of the Job Evaluation Committee.

Ms. Merritt interviewed for the position, but does not possess a Master's Degree. He does however have over 22 years of directly related experience.

The request was approved with all members voting unanimously.

Kim Ingram	Yes
John Houston	Yes
Judith Johnston	Yes
Kent Hunt	Yes
Paul Bisbee	Yes
Eranell Wilson	Yes

Recorded By:

\_\_\_\_\_  
Marilyn B. Benson

Approved By:

\_\_\_\_\_  
Henry E. Ervin, Chairman

ADMH 01-07-00061

# Administrator III

Job Code: A2000

Pay Range: 77

## Definition:

This is highly responsible professional administrative work in the mental health program for the State of Alabama.

Employees in this class perform a variety of responsible administrative duties requiring the exercise of a high degree of independent judgement. Work includes the supervision of professional and non-professional employees; however, the size and type of staff supervised will depend upon the specific nature of the assignment. Duties require frequent contact with high level officials in the state mental health system, other agencies, and the general public. Work is performed with considerable independence and is reviewed by an administrative supervisor through conferences, reports, and results achieved.

## Qualifications:

Graduation from a four-year college or university with a Master's degree in the academic area of specialization. Experience (24 months) in the mental health field, including progressively responsible supervisory or administrative experience (24 months) related to the area of specialization.

Other job related education and/or experience may be substituted for all or part of these basic requirements.

9/06

ADMH 01-06-00094

PERSONNEL MANAGER'S MEETING  
June 23, 2004

ATTENDEES:

Henry Ervin  
Mike Mathis  
David Bennett  
Trina Harrison  
Jim Elliott  
Greg Ethridge  
Joe Long  
Layne Tolbert  
Marilyn Benson  
Lynn Hubbard  
Joan Owens

ABSENT:

ITEMS DISCUSSED:

- Koye Adedokun discussed the audit process and the need for doing a corrected Form 11 when an employee's hours and pay do not coincide, etc. He stated that the Form 11 is the paper trail and that without them it is hard for him to prove to the examiners that the correct payment was made.
- Henry Ervin gave an update regarding proposed salary increases for Pharmacists. He stated that range changes had been requested but because it was the second request for a range change in such a short period of time that the information had to be sent to State Personnel for them to review. He further stated that Tonya Stevens was working on a survey of the commercial pharmacies such as CVS and Rite Aid.
- Henry Ervin discussed the Nursing Classifications. He stated that when the Job Evaluation Committee met on June 17, 2004, he had already submitted range changes to the Commissioner, and had established a class for a Nurse Recruiter which were signed by her. However, that was put on hold because we were unaware of what the financial impact would be. In the meantime someone indicated to the Commissioner or the Associates that nurses were leaving the Bryce facility to go to work for the Partlow facility because of the eight hour shifts offered at Partlow, as opposed to the twelve hour shifts offered at Bryce. In an effort to correct the problem the facility directors and the personnel managers from both facilities, the directors of the MR and MI programs, as well as, Mr. Ervin met with the Commissioner. At that time it was determined that she wanted the two personnel managers and Mr. Ervin to review the RN I's and II's to determine what the problem might be. Two other people were later added to the committee, Danielle Vanzant and Allison Terry. The Commissioner

stated that they were to use the Factor Evaluation System (FES) to evaluate the nursing positions.

After doing so they recommended that there were some classifications at Bryce that were RN I's that should have been RN II's. It was determined that all RN II's at Partlow were appropriately classified. In addition the classifications were outdated and needed to be re-written. The Commissioner then appointed the committee to rewrite the classifications. This will include the specifications for RN Is, IIs, IIIs, IVs, Vs, and a new RN VI. The Directors of Nursing at both Bryce and Searcy will be classed as an RN VI.

- Henry Ervin and the managers discussed the effects of Contract Nursing. He stated that he would select a committee to give input concerning the idea.
- Lynn Hubbard updated the managers on the web site and the announcements posted on it. She stated that with the help of Data Management, an address was created that could be entered that would contain only departmental announcements. This would enable employees from the closed facilities to choose between going through the whole web site or just looking at the departmental announcements. A list of all of the employees from the closed facilities was generated and letters were sent to individuals encouraging them to go to employment services or to public libraries where computers with Internet access are available.
- Marilyn Benson distributed the Vacancy Report to the managers and ask them to update their information and forward to Becky Taylor in the Central Office.
- Lynn Hubbard updated the managers on the drug screens and background checks for new employees. She stated that Central Office would now be responsible for coordinating all personnel for employees in the MR Regional Community offices. This includes generating announcements, as well as, coordinating drug screen and background checks. She indicated that this might create a problem with the regional offices being spread out all over the state but that a possible solution had been proposed to Associate Commissioner, Kim Ingram. The proposal indicated that the MI facilities in those areas would handle the drug screens and background checks for prospective employees through the direction of Central Office. The breakdown is as follows:

Region I	North Alabama Regional Hospital
Region II East and West	Partlow
Region III	Searcy
Region IV	Greil

- 
- Marilyn Benson updated the managers on the possibility of doing some departmental training on exempt selections. She let the managers know that they needed to submit names of individuals needing to be trained.



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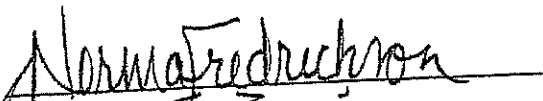
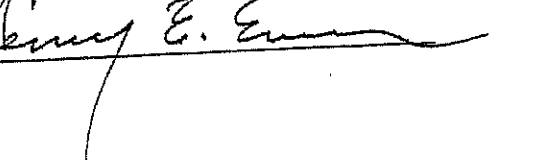
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- Marilyn Benson updated the managers on the possibility of doing some departmental training on exempt selections. She let the managers know that they needed to submit names of individuals needing to be trained.

- Henry Ervin updated the managers on the need for an updated recruitment plan in the department. He let them know that they will be contacted in order to provide input since increasing recruitment efforts will be one of the main goals in 2005.
- Marilyn Benson updated the managers on the revisions of the job specifications. She stated that the Community Service Specialist classifications have drastically changed during the consolidation and closure process, which made it necessary for the job duties of the entire series to be reviewed. She also let the managers know that all specs were in the process of being revised and they would receive copies of them as soon as they were available.
- Henry Ervin and Lynn Hubbard updated the managers on Policies and Procedures. Lynn said the Commissioner wanted Central Office to begin training on Policies during the quarterly meetings. She said not only would this allow the managers the opportunity to give input but it would also insure that everyone was consistent with their interpretation. She indicated that copies of the policies up for discussion would be sent to the managers prior to the next meeting in September. This will allow time for review. Policies up for discussion were reviewed.

The next Personnel Managers Meeting will be held on September 29, 2004. Time and place to be announced.

Submitted by: Norma Fredrickson

Approved by: Henry Ervin

Minutes of the Job Evaluation Committee Meeting  
Held Fri. October 15, 2004

Members Present

Judith Johnston  
Charles Day  
Paul Bisbee  
Otha Dillihay  
Kent Hunt  
Henry Ervin  
John Houston

Members Absent

Eranell McIntosh-Wilson

There was a "called meeting" to discuss a substitution of experience request submitted by Bryce Hospital on Mr. Bob White. Several members expressed their concerns regarding the need to put limitations on the amount of substitution the committee allows. Dillihay expressed concerns about compromising the department's classification system for the sake of compensating one individual. Mr. White, who is a Maintenance Manager III with 28 years experience was the only individual who applied for the Administrator V position. Since he did not have the required educational requirement, substitution was requested.

There was discussion regarding Mr. White being the only qualified applicant. While the entire Administrator series is one that is very generic in nature, the concern was trying to equate someone with an engineering degree with that of a Maintenance Manager. Even though it is managerial and much more technical in nature.

Henry Ervin mentioned that because we were in the process of finalizing procedures for conducting job audits, it would be in the best interest of the department if audits were suspended until such time that our Legal Division has had an opportunity to review the policy.

It was motioned and seconded that the Committee table the request for the next three weeks and defer making any recommendations until Personnel has had an opportunity to finalize procedures for conducting job audits. Personnel would then re-assess Mr. White's job duties, and make recommendation for a more appropriate classification. If no appropriate classification could be found, then there might be a need to develop one that more adequately reflects duties and responsibilities being conducted.

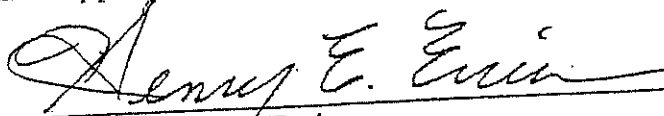
Paul Bisbee suggested that the committee review all substitutions of experience submitted to the Committee within the past couple of years. Otha Dillihay suggested that the next Job Evaluation Committee meeting include on the agenda, recommendations on how to review classifications requesting substitution of experience. At the last Personnel Officer's meeting, a committee was devised to review all exempt job specifications. It was also recommended that this same committee be consulted when developing the criteria to be used in substitution of experience for degrees.

The meeting was then adjourned.

Minutes Submitted by:

  
Marilyn B. Benson

Minutes Approved by:

  
Henry E. Ervin

Minutes of the Job Evaluation Committee Meeting  
Held Thursday, February 24, 2005

Members Present

Judith Johnston  
Paul Bisbee  
Otha Dillihay  
Eranell McIntosh-Wilson  
John Zeigler  
Henry Ervin

Members Absent

Kent Hunt

Due to a quorum not being met at the meeting scheduled for Friday, February 18<sup>th</sup>, a meeting was called on February 24<sup>th</sup> to discuss additional items of importance.

First item addressed was the revision of the Community Relations Specialist I job specification. John Zeigler expressed his concern about the quality of applicants who recently submitted applications for the recently advertised position in his area. His intentions for this job is for it to be an entry level position which may not necessarily require a person to have a degree if they had some experience in the area of public relations. *It was voted and approved that the specification be amended by removing the 12-month experience requirement and also allowing the substitution clause to remain.*

John also mentioned that he was seeking approval for Grace Russell to receive an exceptional raise. He said her hard work was evidenced by the increased quality of marketing efforts put forth by the department for example; annual reports, etc. . . The committee obviously agreed, however, it was noted by Chairman Henry Ervin that exceptional raises did not have to be approved by the Job Evaluation Committee. It was necessary to complete the appropriate form and documentation and have final approval by the Commissioner.

There was discussion regarding the substitution of required degrees and lowering the qualification requirements. Dillihay expressed concern about the year for year substitution and the possibility of devaluating the "earned degree." He also suggested that we review the selection procedure to reflect more adequate qualifiers for substitution. It was noted that the Job Evaluation Committee does have the flexibility to do that.

Judith Johnston added that she feels it is important the we look at the qualification and credentials of persons who have earned degrees first. If no applicants meet the

educational requirements, then of course those individuals with experience but no degree would be considered.

*Dillihay made a motion that HR review the exempt selection procedure and prepare a draft to review the matter of substitution. The motion was seconded and approved.*

Another item of discussion was the conversion of merit system positions over to the exempt system. Dillihay stated that Commie Carter recently made a request to change one of her positions (ASA) over to an Administrator I. While he feels that the position needs to be replaced, he did not feel there was sufficient justification to support it being reclassified to the Administrator I. He further added that the committee has the responsibility to look at the functionality of positions. There was discussion regarding the evolution of the entire Staff Development Section as it relates to their interaction with facilities.

*A motion was introduced to disapprove the request to reclassify the position and any future requests of this nature should be reviewed by the Job Evaluation Committee. It was seconded and approved.*

Another item of discussion was the substitution of experience for the degree on Jim Elliott at Bryce Hospital Personnel. While Mr. Elliott did not have a related degree, it was clearly noted that he had sufficient experience to substitute. The second candidate, Ms. Debra Marks, who is African American, had not only a bachelor's but a master's degree in a directly related field. Dillihay brought to the attention of the committee that it must be mindful of the litigious society in which we live. The objective in filling any position should be to hire the "most qualified candidate," not necessarily the "best candidate."

There was discussion regarding Ms. Marks' experience. It was noted that the interview panel confirmed a 6 point difference in the scoring. Even though Ms. Marks has come up in the ranks of the department, her experience in the area of personnel has not been to the overall scope and complexity from a managerial standpoint as compared to Mr. Elliott, nor has it been department wide.

*A motion was made to approve the request for substitution, it was seconded and approved.*

Other requests included substitution of experience (Habilitation Treatment Coordinator) for the required degree on Sandranetta Hanks and Teresa Harris, both at Partlow. After reviewing the job specification, Judith Johnston recommended that all the specs be reviewed from a system wide standpoint.

*A motion was made and all the requests were approved.*

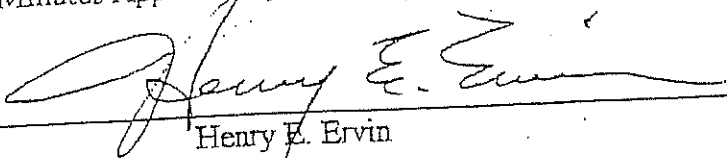
*It was also motioned and seconded that the Job Evaluation Committee Chairman send a memo to the Commissioner regarding future recommendations for re-allocation of positions.*

The Committee agreed to get back on track with having quarterly meetings. The meeting was then adjourned.

Minutes Submitted by:

  
Marilyn B. Benson

Minutes Approved by:

  
Henry E. Ervin



MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD MAY 4, 2005

May 4, 2005

Members Present: Henry Ervin  
Paul Bisbee  
Kent Hunt  
John Zeigler  
Judith Johnston  
Eranell Wilson

Henry began the meeting with the request from Partlow requesting reallocation of Harry Vance, Psychological Assistant, Johnny Bodiford, Psychological Assistant, and Susan Davis, Psychological Assistant to Habilitation Treatment Coordinator I. After a discussion of the duties of Habilitation Treatment Coordinator I, Kent Hunt questioned why the Committee had been ask to do a reallocation. Kent said the Committee has not been doing reallocations in the past. Henry asked everyone to look at the agenda, Item III "Modification of JEC Policy "to reflect reallocation as part of the Committees' responsibilities. Henry said he wants all reallocations to be brought before the JEC. Kent Hunt made the motion to reallocate the Psychological Assistants to the classification of Habilitation Treatment Coordinator I. Paul Bisbee seconded and the Committee approved the item.

Henry requested the reallocation of Catheryn Townsend, Mental Health Specialist III to Fiscal Manager III. Henry reported that a desk audit had been completed and her classification warranted it to be changed to Fiscal Manager III. Paul Bisbee and Eranell Wilson said Fiscal Manager III's in the Facilities are much more complex than the duties of the Contract Office. Judith said Fiscal Manager III in Facilities deal with much more than contracts. Kent Hunt asked if another classification would be more appropriate. Henry concurred that the audit did not reflect a Fiscal Manager III.

Henry requested the reallocation of Sheila Grant, Administrator III and Joe Stringer, Administrator III to Administrator IV. Eranell asked whom they reported to, and their job description. After a discussion, Kent made the motion to reallocate and Eranell seconded, the item passed.

Henry recommended to the Committee that substitution of experience for education in the exempt hiring process be change. Presently the substitution is 1 year of work experience for 1 year of education. The recommended change would be: a. Recommend 2 years of work related experience for 1 year of education earned/achieved b. 8 years of

directly related work experience for required 4 year degree (Bachelor's) Henry said it was the right thing to do. Judith Johnston asked if it would be the same for a Masters? Henry said it would be the same. Eranell made a motion and Paul seconded, the Committee approved the change.

Paul Bisbee brought up the problem of finding Psychological Associates I's. Judith Johnston said we need to look at the series and re-do like the Quality Assurance classification was changed. Paul Bisbee said he would have some one work on changes.

John Zeigler moved to adjourn, Committee adjourned.

Minutes submitted by:

  
Joan Owens

Minutes approved by:

  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE

JUNE 10, 2005


In lieu of a "called meeting," a poll of the JEC members was taken to consider a substitution of experience on Ms. Susan Szczepanski. She applied for the Staff Development Training Specialist II vacancy at North Alabama Regional. The issue was not with the degree requirement because Ms. Szczepanski possesses the degree; however, her work experience was in question since the majority of it was doing staff development work in private industry. In addition, she did not possess any work experience in the mental health field.

Members expressed their vote as indicated below:

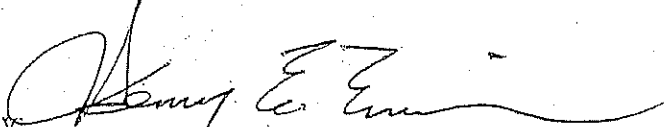
Paul Bisbee	yes
Kent Hunt	no
John Zeigler	yes
Judith Johnston	yes
Eranell Wilson	yes
Otha Dillihay	yes

The item passed with a unanimous vote.

Minutes submitted by:

  
Marilyn B. Benson

Minutes approved by:

  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
July 22, 2005

Members Present: Henry Ervin  
Kent Hunt  
John Zeigler  
Judith Johnston  
Eranell Wilson  
June Lynn  
Also Attending: Kathleen Brantley  
Members Absent: Otha Dillihay  
Paul Bisbee

Committee chairman began the meeting by noting this was the first meeting since the committee has been charged with additional responsibilities of reviewing all positions announced since the implementation of new hiring guidelines.

The first item to be considered was a substitution of experience on Kathy Cason (Rec. Activity Specialist I – North Ala. Regional). There was also an additional request to hire Ms. Cason beyond the minimum steps allowed. It was noted that the Committee does not have that responsibility; it is done solely at the approval of the Commissioner.

The second item: Review of the revised job specifications for the Community Service Specialist series. Old and new specs were handed out for Committee members to compare. It was noted that no change in salary range recommendations were made on the CSS I and CSS II series, however the new qualifications for the CSS III now allow a bachelor's level individual to qualify with experience. Recommendations were made to increase the ranges for the CSS III from range 72 to 74, the CSS IV from range 77 to 78 and the CSS V from 80 to 82. These recommendations were made based upon when funding becomes available. A motion was made to approve the specs as revised. Another motion was made to approve the pay ranges when funding is available. Both motions were seconded and approved. It was also noted that if anyone is hired in the interim, they would be hired at the current pay range.

There was discussion about whether or not a financial analysis had been done before making the proposed salary range increases. It was noted that because these positions are so unique, there are no positions in which to make a comparison.

Commissioner Houston addressed the group and thanked everyone for their willingness to accept the added responsibility of reviewing all the new positions under the new hiring guidelines. He mentioned two positions that he would like to fill, Fiscal Mgr. IV, and Administrator VII, but he stated that he did not have any intentions of acting on either one of them in the immediate future. He really wanted to get input from the Committee as to what their recommendations would be regarding both positions.

There was discussion about filling any new positions until the beginning of the fiscal year. Eranell Wilson recommended that there be no additions to the already existing deficit.

Each Committee member was given a list of positions to be considered. Requests were reviewed by facility, starting with Bryce:  
All Bryce requests were approved with the exception of the Plant Maintenance Worker. The committee voted and approved to hold this position until the next meeting.

There was discussion about many security officers getting their certifications and leaving the department as soon as they are certified. It was suggested that we come up with a policy that would require them to stay a certain length of time before they were able to transfer somewhere else.

Judith recommended that the facilities provide more detailed information when submitting letters of justification for their positions. She volunteered to work on outlining more specific details which would be useful in helping the committee. It was also noted that it might be necessary to get the facility director on the phone during the actual meetings to answer additional questions that the committee may have regarding the need to replace their positions, particularly if they have been vacant for some time.

The request from Griel for a MH Security Officer I was withdrawn from consideration.

North Alabama Regional's request for a Plant Maintenance Worker was approved.

Partlow's requests were all approved.

Searcy's requests were all approved with the exception of (2) ASA I's, Material Manager II, and (2) Staff Development Specialist I's that were put on hold. There was discussion regarding the Staff Development Specialist positions, and the Staff Dev. Spec. IV was approved.

Taylor Hardin Secure Medical's positions were all approved with the exception of (2) Security Officer positions: (Don Fowler & Roy Swartz).

Central Office positions were all approved. There was discussion regarding the Fiscal Manager IV (Budget Officer), the Administrator VII, and the Assistant Dept.

**Personnel Manager positions.** There was discussion about announcing the Assistant Dept. Personnel Manager position until the beginning of the fiscal year. Due to the nature of these positions, there was concern about how facilities would perceive announcing new positions at a time when new hiring restrictions are being imposed.

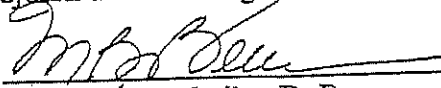
A motion was made and a vote was taken to approve announcing the positions. The discretion on when to announce the Fiscal Mgr. IV and Administrator VII would be left up to the Commissioner. It was voted to delay announcing the Asst. Dept. Personnel Director until the beginning of the fiscal year.

There was discussion about the Contract Office position (Accounting Assistant). Kathleen expressed her concern about whether an individual in this position would be qualified to do fiscal inventory.

**There were 12 new positions in Substance Abuse to be considered.** Kent mentioned that his entire office was being restructured. Some of the current staff would be able to qualify for the newly created positions. If the individuals were selected to fill the positions, their old positions would be abolished. After lengthy discussion, all the positions were approved.

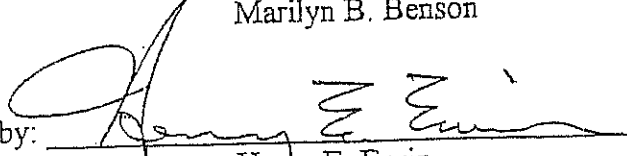
There was a motion to adjourn until the August meeting.

Minutes submitted by:



Marilyn B. Benson

Minutes approved by:



Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
October 27, 2005

All members were in Attendance:

Kent Hunt  
John Zeigler  
Judith Johnston  
June Lynn  
Otha Dillihay  
Paul Bisbee  
Eranell McIntosh-Wilson

The meeting was called to order by: Chairman, Henry Ervin. Minutes of the last meeting were approved.

The first item : Substitution of Experience for a Planning & Quality Assurance Specialist IV (Alice Kidd) on Carmel Wedgeworth. There was discussion regarding the request. A vote was taken and the request was approved.

Second item: Substitution of Experience for Administrator III (Central Office Substance Abuse Division) on Crystal Jackson. A vote was taken and the request was approved by a unanimous vote.

Third item: Reallocation of Planning & Quality Assurance Specialists positions:

	From (range 74)	To (range 77)
Franklin Jones	P & Q II	P & Q III
Audrey McShan	P & Q II	P & Q III
Mildred Groggel	P & Q II	P & Q III
Connie Batiste	P & Q II	P & Q III
Clyde Williams	P & Q II	P & Q III

There was considerable discussion regarding these requests. It was noted that these are Quality Enhancement positions and the individuals have more than enough experience to reallocate them. A vote was taken and the requests were approved.

Fourth item: Chairman Ervin discussed the need to review many of the upper level Administrative Classifications. It was noted that all the Administrator job specs allow for substitution of experience for the required degree. He mentioned that he recently met with some consultants from AUM and discussed the possibility of conducting a Wage & Classification Study. In the mean time, it is necessary for us to initiate ground work for the process to begin. The Committee agreed that the substitution clause should be



from the higher level classes starting with the Administrator V. The consensus from the group was by allowing the substitution clause for the higher level positions and lowering the credentials, we begin to weaken the overall structure of the organization. It was noted that MH Specialist series allows for substitution up to the IV and the V.

It was agreed that the Committee begin to review these classifications to see if substitution should be allowed.

**Fifth item:** The Policy for the Job Evaluation Committee was reviewed and recommendations were made to include "reallocation" of positions. A recommendation was also made to change the language of the policy to read: "meeting monthly or more frequently as necessary." A motion was made, seconded and the policy changes were approved.

**Sixth item: Reviewing Positions -** Questions as to whether or not the Committee wanted to continue the process of reviewing positions. The Commissioner came in to address the group. He thanked them for all of their efforts in assisting with the review process. He went on to explain why he had requested that positions be reviewed. He went on to state that in the past, most direct care position were never questioned, however, he began to see many come across his desk that did not have appropriate signature or approvals, so he wanted to create another level of approval to help him sort out what was actually legitimate and what was not. His original intent was for the Committee to do it up to the beginning of the fiscal year. Initial comments about the process was that it was beneficial in that it created a level of accountability.

At this point, he was leaving it up to the Committee to decide as to whether or not they wanted to continue the process. The group consensus was that as long as 1<sup>st</sup> and 2<sup>nd</sup> level approvals were given by Facility Directors and Associate Commissioners, that should be sufficient. Judith Johnston thought that it would still be a good idea to include the letters of justification for supporting documentation.

June Lynn stated as she did at the previous meeting that she felt it was not necessary to second guess someone's request from a hospital when they would be the ones to have first hand knowledge of what their facility needed.

Otha Dillihay expressed that he still sees value in the Committee itself. He saw the purpose as being good when it creates that level of accountability.

A motion was made, seconded and approved to discontinue the review of all non essential requests with the exception of new positions.

A motion was made and a vote taken to approve the entire block of position requests as listed below:

Items up for approval included:

- MH Security Officer I (Bryce)

- MH Admin. Asst. V (Kidd)
- ASA-II (NARH)
- Clerk (NARH)
- Plant Maint Worker (NARH)
- Rec. Activity Spec. I (NARH)
- MH Sec. Officer I (NARH)
- ASA I (Partlow)
- ASA I (Partlow)
- ASA I (Partlow)
- Hab Treatment Coord. II (Partlow)
- Account Clerk (Searcy)
- Canteen Clerk (T-Hardin)
- MH Sec. Officer I (T-Hardin)
- MH Sec. Officer I (T-Hardin)
- MH Sec. Officer I (T-Hardin)
- Stock Clerk II (T-Hardin)
- MH Spec. II (C/O)
- MH Spec. III (C/O)
- ASA II (Reg. II Comm. Srv.)

There was some discussion regarding three positions in the MI Division. Mr. Dillihay explained that MI/Community programs has been weakened as a result of individuals resigning and some who have been reassigned to other areas.

A job audit was conducted on Leah Martin's position (currently Admin. Asst. III) and the final recommendation that the position should be MH Administrative Assistant VI. The request to reallocate the position was approved by a unanimous vote.

Mrs. Wilson brought to the attention of the Committee recommended changes on the Psychologist specifications regarding the licensure requirement. It was noted that the current licensure requirement is making the recruitment and retention of appropriate personnel extremely difficult. Dr. Bisbee noted that there are 3 categories of licensure: 1) counseling 2) clinical and 3) organization. The Psychologist III is seen as a training expert.

Currently announcements read: "eligible for licensure and certified within one year of employment." It was motioned, seconded and approved to remove the licensure requirement from our qualifications.

The question was whether there was something in the applied field which could compensate for the licensure.

MR's description would be geared more toward the "behavioral field."

\*\* behavioral analysis certification for the current Alabama licensure requirement.

*Attachment*

# **MINUTES AND ACTIVITIES OF THE JOB EVALUATION COMMITTEE** ---

## **December 2, 2005**

Two items requesting substitution of experience for the degree were forwarded to the Committee:

- |                           |         |              |
|---------------------------|---------|--------------|
| 1) MH Specialist I        | (Greil) | Mona Nealy   |
| 2) Rec. Activity Spec. II | (Bryce) | Mary Mangrum |

A telephone poll was taken with both requests being approved. Actual votes are recorded below:

	<u>Greil</u>	<u>Bryce</u>
Dillihay	yes	yes
Bisbee	yes	yes
Chambers	yes	yes
Johnston	yes	yes
Wilson	yes	yes
Hunt	no	yes
Zeigler	N/A	N/A

## **December 9, 2005**

*Attachment 2*

A telephone poll was conducted for an item previously submitted at the August 29<sup>th</sup> meeting regarding a job audit for Debbie Popwell. The recommendation was made to upgrade the position to a Mental Health Specialist I. The item was approved. Votes are recorded below:

Hunt	yes
Dillihay	yes
Zeigler	yes
Bisbee	yes
Chambers	N/A
Johnston	no
Wilson (Kreauter)	N/A with recommendation to carry over to January meeting

Minutes submitted by:

*Marilyn B. Benson*  
Marilyn B. Benson

Minutes approved by:

*Henry E. Ervin*  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
January 12, 2006

All members were in Attendance:

Kent Hunt  
John Zeigler  
Judith Johnston  
Otha Dillihay  
Paul Bisbee  
Eranell McIntosh-Wilson  
Susan Chambers

The meeting was called to order by: Chairman, Henry Ervin. Minutes of the last meeting were reviewed. After some discussion regarding the approval of an item previously considered by the Committee (MH Specialist I) and it being approved by "telephone poll", Judith Johnston expressed her concern about the need to table items needing further discussion, especially items that were not of a time sensitive nature. Eranell Wilson brought up the fact that in a previous meeting, there was concern whether or not the recommendation of MH Specialist was the appropriate class in lieu of the fact that it has been associated with being a clinical position. Ms. Johnston made a recommendation that we take a vote on the minutes as they were submitted and bring the issue of "telephone polling" up for further discussion before the current meeting adjourned.

Minutes were approved.

The first item : Substitution of Experience for a Technical Service Specialist I (Central Office) on Phillip Thomas. There was discussion regarding the request. A vote was taken. John Zeigler recused himself from voting due to personal issues. The request was approved.

Second item: Substitution of Experience for Administrator V (Central Office Substance Abuse Division) on Kristopher Vilamaa. Kent Hunt gave a brief overview of the request and the need to fill this critical position. Otha Dillihay further noted that he was on the interview panel and thought Mr. Vilamaa was quite suited for this position. He also expressed his concern that working titles may be misleading and not actually reflect duties and responsibilities that a person would perform. For example Director of Information Services is maybe viewed as someone being under our Department's Division of Information Management. The question was proposed as to whether or not each division would have their own Director of Information Services. A vote was taken and the request was approved by a unanimous vote.

**Third item: Review of Planning & Quality Assurance Specialist IV specification**

Dr. Danielle Rowe submitted a request to include a third option on the job spec to include the area of statistical analysis or research with the emphasis on data collection and developing written reports. Currently the job spec has a QA Option for MI and MR. Kent Hunt noted that their division might also have a need for someone with the research/statistical analysis option as well.

Mr. Dillihay questioned whether it was necessary to even have all of the proposed options and why we could not have one job spec that would allow one to state whatever area of interest actually needed for the position. Consequently the announcement would reflect the same criteria. He further stated that having so many options only reinforces the image that we have a separatist organization because we have different divisions. He felt it was important that the message be conveyed; even though we have four different Divisions, we are unified in our purpose.

Judith Johnston noted that on the last page of the job spec, there were specific disciplines listed and each division (MI/MR) was allowed to select their requirement. Ms. Johnston asked whether or not it was necessary to include all the disciplines on the announcement or could only specific ones be used. It was noted that the general rule has been to list all the disciplines on the announcements; however, Chairman Ervin noted that the Committee could make a recommendation to discontinue this practice.

Dillihay noted that colleges and universities are now getting highly specialized with the majors that they offer. This is all the more reason why managers should be given an opportunity to shape particular fields of study on announcements in order to obtain more qualified candidates to fill positions.

Judith Johnston motioned that the committee approve proposed changes to the P & Q IV specification as submitted in order to allow a pending announcement to be posted. The committee would come back at a later date to review overall qualifications.

**The request was approved.**

**Fourth item: The committee revisited the issue of telephone polling.** There was considerable discussion as to when telephone polling should and should not be used. It was noted that telephone polling should only be conducted on matters that are of a time sensitive nature. Mrs. Wilson noted that the creation of new classifications and reallocations are items that should be discussed in a group setting. She felt that having the benefit of group discussion would assist in rendering decisions because this would allow any committee member who may have opposed the request, an opportunity to voice their concern.

It was noted by Dillihay, that the Committee should not be too specific about the items that telephone polling should be conducted on because there maybe exceptions submitted at the Commissioner's discretion.

John Zeigler suggested that on the Job Evaluation Committee Policy, an amendment be added under section 2"D" and "F" to include the Commissioner's designee.

Final recommendation was not to amend the actual Policy, however the minutes would reflect: "A telephone poll will generally not be conducted but with the exception of "D" and "F". "Unique circumstances will be handled on an individual basis." It was motioned and seconded that the meeting be adjourned until October.

Minutes submitted by: \_\_\_\_\_  
Marilyn B. Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin



MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
February 23, 2006

Members in Attendance:

Kent Hunt  
John Zeigler  
Otha Dillihay  
Paul Bisbee  
Eranell McIntosh-Wilson  
Susan Chambers

Absent: Judith Johnston

The meeting was called to order by: Chairman, Henry Ervin.

Minutes were accepted and approved.

The first item : Substitution of Experience for a Staff Development Specialist I (T-Hardin) on Curtis Golightly, MH Worker. There was discussion regarding the request. The group wanted to know if MH Worker experience had ever been substituted for a degree requirement before. Dr. Bisbee and Ms. Chambers both pointed out that in addition to the 18 years plus as a MH Worker, this individual has 10 years of training experience in the area of quality assurance. That was the basis of the substitution. A vote was taken. The request was approved.

Second item: Substitution of Experience for Staff Development Specialist I (T-Hardin) on Eric Goodwin, MH Worker.  
A vote was taken and the request was approved.

Third item: Substitution of Experience for Administrator VI/MI Executive Assistant (Central Office) on Katrina Nettles, Acting Facility Director.

The request was approved.

It was noted a telephone poll was conducted prior to this meeting on Lynn Doer, RN (Partlow) requesting substitution of experience. Response was received from five members, all voting for approval.  
The request was approved.

Fourth item: Review of RN I, RN II, and Planning & Quality Assurance Specialist IV Job Specs.

The Committee approved the P & Q IV spec. It was noted that a committee of personnel managers was created to review all exempt job specs. The personnel committee



additional week was allowed for committee members to review and get feedback to Marilyn.

The meeting was adjourned.

Minutes submitted by: Marilyn B. Benson  
Marilyn B. Benson

Minutes approved by: Henry E. Ervin  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
April 27, 2006

Members in Attendance:

Kent Hunt  
John Zeigler  
Otha Dillihay  
Paul Bisbee  
Eranell McIntosh-Wilson  
Susan Chambers

Absent: Judith Johnston

The meeting was called to order by: Chairman, Henry Ervin.

**Minutes from the previous meeting were accepted and approved.**

**1<sup>st</sup> item : Job Audit for Sherry Powell (Bryce)** The results of the job audit recommended that Ms. Powell's classification be a Community Relations Specialist II. A vote was taken, **the request was approved.**

There was discussion introduced by John Zeigler, regarding changes in the job specs for the Community Relations Specialist series. He expressed the need to make the duties and responsibilities more inclusive for the department as a whole. He volunteered to submit recommended changes to personnel. **Changes were approved by the committee.**

**2<sup>nd</sup> item: Substitution of Experience for Habilitation Treatment Specialist (Bryce) - Sherry Lynn Gann.** There was discussion regarding the request. There was a question as to how it compared to the Sheltered Workshop Supervisor. Paul Bisbee gave further explanation and clarified duties. A vote was taken. It was noted that Eranell Wilson and Otha Dillihay abstained. **The request was approved.**

**3<sup>rd</sup> item: Reallocation of Kristy Simmons from Advocate I to Advocate II.** There was discussion regarding Ms. Simmons actual qualifications. The committee referred to the job spec which clearly states 36 months of paid advocacy experience. It was not clear that Ms. Simmons met these qualifications. The Committee questioned the reason for the reallocation. Was this just another way to reward an individual by giving them a raise? Kent Hunt stated that the committee needs to also identify what effect it will have on other employees in the same classification. The concern is identifying the right vehicle in which to utilize in accomplishing the desired outcome. It was the consensus of the group that reallocations may not be the appropriate way to do that.

It was voted and approved to defer action on this request until additional information justifying Ms. Simmons qualifications was received, also identifying what effect this action would have on other advocates within the system.

Otha Dillihay suggested that we find out if Advocacy is running the risk of losing this individual, the committee may need to address the issue as soon as possible rather than waiting until the next meeting.

**4<sup>th</sup> Item: Reallocation of Bubba Blair from Administrator IV to Administrator VI.**

There was much discussion regarding the request. Kathleen Brantley was available to provide further justification. It was stated that we were dealing with an issue of retention. Due to the fact that Bubba is the only person available in the department with the technical skills in implementing the new system under AFNS, it is being recommended that his position be reallocated. Since the Department is limited in the number of Fiscal Managers it is allowed to have, it was suggested that Mr. Blair's current classification of Administrator be used. It was noted that this would only be a two step increase for him and in 6 months, he would be topped out again.

**Concerns from other committee members:**

**E. Wilson-** "if we are going to continue the practice of reallocating in order to give promotions, we must be consistent in whatever we do."

**Zeigler -** "the group needs to keep in mind actual need within the organization."

**Hunt -** "we must not look at individuals, but the actual position within the organization and how the overall balance of the organizational structure will be affected as a result of one individual being moved up."

**Dillihay -** "because we are in danger of losing 20% of the workforce within the next three years, the department can ill afford to wait until we complete a wage and classification study before acting upon these type of requests. The real challenge is to find a way to keep the educational knowledge within the department."

**E. Wilson-** "would feel more comfortable with a proposal to impact the entire division rather than one individual."

**Dillihay -** "he would be willing to provide an organizational chart outlining proposed changes within the division and have it ready for committee members to see at the next meeting."

**Chairman Ervin** explained the mechanics involved with merit versus exempt classes. There is no way to reallocate merit to exempt.

Dillihay expressed the need to be consistent with reallocations and questioned whether or it made sense to incur the financial cost of announcing a position when the final outcome is already perceived. Reallocations can be further complicated with the recent reinstitution of probationary raises. The compensation model has now been escalated.

On the basis of expanded duties of Mr. Blair and upon criticality of need for this position, the request was approved.

**5<sup>th</sup> item: Reallocation of Business Managers and Facility Directors.** Susan Chambers requested that all Facility Directors be classified as Facility Director II's and all Business Managers be classified as Fiscal Manager III's. This change would ensure that employees in the respective positions receive equal pay for equal work.

*The current specifications make reference to the size of a facility. While this may have been an appropriate classification system in the past, she stated that it is no longer an indicator of the work requirements. Larger facilities have significantly decreased in size, and smaller facilities actually serve more patients. She further stated that Facility Directors have the same job responsibilities against which their performance is evaluated. The same arguments can be made for Business Managers. A motion was made and seconded to accept the recommendation with the attached rational of the large/small facility needs.*

*Mr. Ervin will review the affected positions (on an individual basis) to determine when/how employees would be transitioned into the new classifications. Changes should be made in a manner that will prevent loss of annual raises.*

Chairman Ervin informed the committee that the classification of Facility Director III is not being utilized. This classification has the responsibility of supervising other facility directors within a particular division. The positions currently held by Paul Bisbee and Judith Johnston would be the equivalent. Everyone agreed to continue the discussion of this at the next meeting.

Dillihay stated that staffing standards are not realistic for the current needs of the organization. He was going to ask the Commissioner to convene a panel of HR experts to work on staffing standards and make recommendations to departmental officials.

6<sup>th</sup> Item- Reallocation of Psychological Associate to a Psychologist I at Greil. Paul Bisbee explained that this reallocation was for a position and not for an individual. The request was approved.

7<sup>th</sup> Item -Creation of Coding Compliance/DRG Coordinator - Susan Chambers explained that this type of position would be used throughout the system. Because it is responsible for billing, it will ultimately be a money maker for the department. A vote was taken and the request was approved.

8<sup>th</sup> Item - Review of Salary Survey for Health Information Mgt. and DRG Coding Specialists. A request was that Personnel supply additional salary information regarding the Medical Directors.

9<sup>th</sup> Item - Request to downgrade a Community Relations Specialist III to a Community Relations Specialist II and upgrade a Community Relations Specialist I to a Community Relations Specialist II at Central Office. There was discussion, a vote was taken, all yes votes with one abstaining vote from Kent Hunt. The request was approved.

10<sup>th</sup> Item - Substitution of Experience on Tony Polion, for an Administrator II (Partlow). It was recommended that the request be carried over to the next meeting due to the fact no representative from the MR Division was available to justify the request.

The committee agreed if the position was of such criticality, a telephone poll should be conducted.

11<sup>th</sup> Item – Creation of a Special Agent II position. It was noted that no Special Agent II position has ever existed. A vote was taken to obtain the approval of the supervisor and table the request until the next meeting.

12<sup>th</sup> Item – Reallocation of Ike Abrams (Central Office) - the request was for reallocation from a Fiscal Manager I to a Fiscal Manager II. A vote was taken with all yes votes and one abstaining vote from Kent Hunt.

13<sup>th</sup> Item – Review of Job Specification for Hab. Treatment Coordinator I, II, and III. Specifications were handed out to committee members for them to review and report comments and suggestion at the next meeting.

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Jodie Roy/Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
June 26, 2006

Members in Attendance:

Kent Hunt  
John Zeigler  
Otha Dillihay  
Paul Bisbee  
Eranell McIntosh-Wilson  
Susan Chambers

Absent: Judith Johnston (via telephone conference)

The meeting was called to order by: Chairman, Henry Ervin.

Ms. Wilson – concerned about a pattern of reallocating positions.

Mr. Ervin – explains that he and Mr. Dillihay have had discussions regarding the JEC and role in reallocating individuals other than positions.

Mr. Dillihay – the committee's focus has shifted over the years from setting policy to a committee that makes a decision on personalizing who gets a certain job. The main focus of the committee should be reallocating positions not individuals. The committee should question whether or not the job has actually changed enough to warrant reallocation. Committee members should rely on the expertise of HR professionals in making that recommendation.

When considering substitution of experience, the committee should also establish parameters. Again, the committee should rely on HR to make the determination whether or not sufficient experience is there in which to substitute.

Ms. Chambers – agrees there needs to be some guidelines established for the Committee. She has noticed there are some inconsistencies with regards to how each personnel office handles grading applications. She expressed the need to review the exempt selection process to ensure consistency of application throughout the system

Mr. Ervin – agrees and mentioned we are in the process of establishing a training module for Exempt Selection.

Dr. Zeigler – mentioned the fact HR personnel might benefit through a training video.

Minutes from the previous meeting were accepted and approved.

1<sup>st</sup> item : Reallocation of Sherry Powell (Bryce). The audit was approved from the previous meeting. This is to request to reallocate her position from Community Relations Specialist I to Community Relations Specialist II. A copy desk audit was in the previous packet, May 26, 2006. Ms. Powell wanted to challenge her audit because she felt it should be a Community Relations Specialist III. Mr. Dillihay made a motion to accept the recommendation of HR, that the position should be a Community Relations Specialist II. A vote was taken, the request was approved.

2<sup>nd</sup> item: Reallocation of Fiscal Managers and Facility Directors. Mr. Ervin provided information regarding the annual evaluation dates for each individual. Ms. Chambers – Wanted to know when this action would be effective. Her major concern was that no one should be penalized and miss their annual raise because their class was reallocated. Mr. Hunt – asked if they would get a raise on the reallocation date.

Mr. Ervin - on reallocations there are no probationary raises.

Ms. Johnston – suggested that we operate as we have done in reallocating previous classes. Select a specific date for reallocation on everyone and change everyone at the same time.

There was extensive discussion regarding the matter.

Susan Chambers and Paul Bisbee agreed to withdraw the request. It was agreed to table the matter until a later date.

3<sup>rd</sup> item: Reallocation of Kristy Simmons from Advocate I to Advocate II.

This request was a follow-up from a previous meeting.

Mr. Hunt - wanted to know if Mr. Fortson had a desk audit conducted to determine whether or not Ms. Simmons was working out of classification.

The Committee voted and approved that the position be announced thereby giving Ms. Simmons an opportunity to apply for it.

4<sup>th</sup> Item: Substitution of Experience for Joyce Carvana. Ms. Carvana was the only applicant who applied and met minimum qualifications on the basis of substitution.

Ms. Wilson – wanted to know what the Administrator I would do. Elmyra Jones, Executive Director for DD was asked to come in to address some additional concerns of the Committee. She explained that this is a new position and currently she is performing many of the tasks herself. There was one person in her own division who applied and stated that it would be beneficial to have someone with knowledge of the DD Council. There would be a need for some temporary help to answer the phone and other administrative duties. This position would still function as



the office manager. She had asked for a MH Administrative Assistant VI, but was under the impression that this classification only designated for Associate Commissioners.

The discussion of the group was whether the level of work for this position would be consistent with other Administrator I's which may be of greater complexity. Individuals in the Administrator I class may question why they are not Administrator II's.

Mr. Dillihay – made a motion that the request be sent this back to Human Resources for them to recommend a more appropriate class.

A vote was taken Mr. Hunt opposed. Ms. Chambers abstained.

5<sup>th</sup> item: Substitution of Experience for Rebecca Taylor from a Personnel Assistant II to a Personnel Specialist II.

There was considerable discussion regarding the request. It was noted that there were no other qualified applicants for this position. The Committee did not feel the type of work experience Ms. Taylor had was sufficient to be classified as Personnel Specialist II.

A vote was taken not to approve the request with Mr. Dillihay, Ms. Johnston, and Dr. Zeigler abstaining.

6<sup>th</sup> item: Substitution of Experience for Tony Polion.

A vote was taken and the request was not approved.

It was recommended that before the JEC meets again, HR devise some specific guidelines of operation for the Committee regarding consideration of substitution of experience as well as reallocations.

The meeting was adjourned.

The remaining items on the agenda would be carried over and considered at the next scheduled meeting.

Minutes submitted by: \_\_\_\_\_  
Jodi Roy/Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

**Minutes of the Personnel Manger's Meeting  
July 18, 2006  
Central Office  
Montgomery, AL**

The meeting was opened by Mr. Ervin.

David Jackson, Chief of Staff for the Commissioner was on hand to thank the Personnel Managers for all their hard work and briefly discussed some of the difficulties they had in dealing with scheduling and overtime payment.

Mr. Dillihay addressed the group concerning issues with MH Workers

- There are going to have to be policy changes to modify the 24 pay periods for it to accommodate the new problems the new-semi monthly pay.
- It is important that MH Workers are paid accurately, paid on-time, and paid in a way that they understand
- The solution will ultimately cost the department more than what it is costing to implement
- Each facility should have 1 or 2 key payroll people who are experts and able to address employee concerns

Joe Long mentioned the international labor group being on the campus of Taylor Hardin recruiting for union membership. Courtney supported Joe's response to them by telling them they needed to leave.

Koye addressed the group regarding payroll issues. He had examples of checks in which he demonstrated how the hourly rate had been adjusted for the MH Workers. "When the employees have less hours than the standard hours, we will advance comp time. The policy currently in place does not support this procedure. Recommendations will be forwarded to the Commissioner to re-align/modify our policy to reflect this change. Policy # 60-50. It was suggested that the term, "non- regular hours" be used instead of the term, "over-time." Koye noted that the term, "non- regular hours," is already printed on the leave slip.

Mike suggested that the term "mandatory non-regular hours" be used instead of the term, "overtime." Mr. Ervin informed everyone that the Facility Directors would be meeting in a couple of days and this will be a topic of discussion.

Mr. Ervin informed the group that Staff Development was in the process of developing a module to assist HR in coordinating training for Exempt Selection.

There was discussion regarding Exit Interviews and how the information was being used. It was suggested that facility numbers be included on the exit interview form itself, to assist managers with tracking information. Mr. Ervin informed the group that under Commissioner Sawyer, the information was compiled for her review on a quarterly basis, but there was no actual system set up to utilize it.

Mr. Ervin informed the group about the need to update the Recruitment Plan and asked for the groups input regarding future needs at their respective facilities.

One area of concern voiced was the possible increase in Shift differentials for nurses and giving more flexibility for hiring. It was also suggested that the salary range for LPN's needed to be increased.

A committee has been devised to review the RFP's submitted for Wage and Class. Members include: Paul Bisbee, Judith Johnston, Kent Hunt, Doug Lundsford, and all of the departmental Personnel Managers. Mr. Ervin informed the group that our Personnel Managers would do the leg work in identifying job groups and also identifying which classes should allow substitution and which ones should not.

Mr. Ervin stressed to Personnel Mangers the need to ensure all social security numbers were in place on Form 11's and 108's.

Marilyn Benson informed the group that the start date for using revised exempt applications, will be August 1<sup>st</sup>. Supplies were issued to the Personnel Mangers attending the meeting. Additional supplies should be coordinated through Central Office Copy Center.

It was requested that facilities send general personnel information on Facility Directors to Central Office Human Resources. If the Commissioner

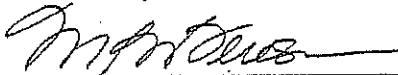
or the Associate Commissioner wishes to see the Personnel File, unless Central Office keeps a file, it is not possible to provide this information.

There was also discussion about reviewing criteria for hiring RN's and LPN's that will allow greater flexibility due to them being such critical care positions with high turnover.

Revised RN job specs were disseminated. Work will continue on the next levels: RN III, RN IV, V, and Nurse Practitioner. Recommendations for the Hab Treatment Series were presented to the Job Evaluation Committee for approval. If no further input is received from them within the next few days, revisions will be forwarded to the Personnel Offices.

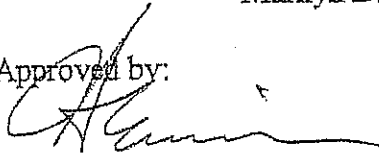
The meeting was then adjourned.

Minutes taken by:



Marilyn B. Benson

Approved by:



Henry E. Ervin

**MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
August 7, 2006**

Members in Attendance:

Kent Hunt  
John Zeigler  
Otha Dillihay  
Eranell McIntosh-Wilson  
Susan Chambers  
Judith Johnston

Absent: Paul Bisbee

The meeting was called to order by: Chairman, Henry Ervin. There was considerable discussion regarding the proposed guidelines for the JEC.

**Dillihay** – mentioned he had discussed the JEC guidelines with the Commissioner and he was concerned about ensuring their application across the board as it relates to each division.

**Ervin** - made the Committee aware that the job specs indicate whether substitution is allowed for each classification. It is not the responsibility of the Committee to determine who does what, the Committee will look at reallocating classifications not individuals.

**Ms. Wilson** – mentioned that even though the new guidelines stated JEC would not be responsible for reallocations, she felt like further clarification was needed. She suggested that the guidelines specify all requests for reallocation of positions come before the Committee.

**K. Hunt** – suggested the Committee establish policy allowing it to become more of an appeal mechanism.

**S. Chambers** – When the HR manager makes a determination that an individual meets minimum qualifications, why would it need to come before the JEC for approval? The Committee should establish parameters for receiving re-classifications/reallocations.

**Dillihay** – The head of security at one facility and the head at another facility may have totally different tasks, and therefore, consideration must be given to what impact it would have across divisional lines.

It was recommended that all completed *job audits* require Associate Commissioner's approval.

All reallocated positions will be advertised. If individuals within a specific job series were reclassified, advertisement would not be done.

It was recommended that Re-classifications be addressed under a separate heading, giving its definition and stating whether or not advertisement should be done.

**Carry Over Items from the previous meeting**

<b>New Classes established and approved:</b>	<b>Range</b>
Deaf Care Worker	50
IT Systems Management Spec. I	79
Coding Compliance Specialist	61

**Tabled requests:** Health Information Specialists I, II, III

**Minutes from the previous meeting were accepted and approved.**

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Jodi Roy/Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

**MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
December 4, 2006**

All Members in Attendance:

Kent Hunt  
John Zeigler  
Otha Dillihay  
Eranell McIntosh-Wilson  
Susan Chambers  
Judith Johnston  
Paul Bisbee

The meeting was called to order by: Chairman, Henry Ervin.

**I. Review Minutes of last meeting**

Minutes of the last meeting were approved with the following corrections: "spelling of John Ziegler's name," and the first paragraph of the minutes should reflect "the Commissioner was concerned that we have across the board application of the JEC guidelines."

Susan Chambers mentioned that she had received many requests from her facilities for reallocations and felt the committee needed some clarification as to what we could and could not do. Committee members asked about the status of the JEC guidelines.

**Ervin** – informed the Committee that the Commissioner had approved the JEC Guidelines; however, our office discovered a grammatical error, and they were forwarded again for the Commissioner's signature. It was at that time, the Commissioner asked David Jackson and Anne Evans to also review and comment. At the present time, guidelines have not been released by the Commissioner's office.

**II. Nursing shortages /Recommendation to increase ranges**

There was discussion regarding State Personnel recently approving to increase salary ranges for LPN's from range 57 to range 62. Committee members reviewed recommendations submitted by Central Office Personnel



and some of the other facility personnel managers. They voted and approved to adopt the same recommendations.

Approved changes were as follows:

LPN I from range 57 to range 62

LPN II from range 59 to range 64

There was much discussion regarding the hiring steps for both LPN's and RN's. Ervin mentioned that the Finance Director recently approved salary range changes for MH Workers. The State Personnel Board meets on December 20<sup>th</sup>. The proposal will then go to the Governor for his signature. It is expected that the Commissioner will make an announcement shortly after that time.

It was noted that individuals who fall within the newly recommended ranges will not receive increases; however, their ranges will be adjusted upward. If employees are at the top of their range and have not received a raise within the past year, they would be eligible to receive up to two step increase.

#### **Item II B (A request to Adjust hiring steps for both LPN's and RN's)**

**Dillihay** – before we recommend changing the hiring steps, he wanted to see a cost analysis to reflect the impact the recommendations would have on the overall system. He also questioned whether using Public Health information was even useful because of the institutional environment and the clientele we serve.

**Chambers** – we need to have one across the board entry level step, because it's just as hard to hire a nurse in Montgomery as it is in Tuscaloosa.

**Dillihay** – noted there may be factors which we have not considered other than salary to explain the differences in geographical regions. Some examples are: work ethics and daycare for children. It was noted that the transportation initiative was working really well. He also suggested that we survey the Personnel Officers to determine specific needs and how we can infuse training techniques within the new workforce and its culture.

**Wilson** – suggested that we look at the possibility of doing scholarships for LPN's, stipends, reimbursed tuition costs, etc...

**Johnston** – would like to see the impact of how many people would be affected as well as the number of individuals receiving increases.

The general concern of the Committee was not to have new employees coming into the system making more money than employees who have already been there.

It was brought to the attention of the Committee that the newly proposed salary recommendations were for new hires with “no experience.”

A vote was taken and it was approved that Item II B (Adjusting hiring steps for LPN's and RN's) be tabled until an impact study could be conducted and the findings reported back to Committee members at a later date.

### **III. Reclassification of positions in Substance Abuse Division**

**Hunt-** presented three proposal for the Committee to consider. #1) Current job duties of his executive assistant (Ms. Sarah Harkless) do not adequately reflect actual work. She is currently classified as an Administrator VI and feels the classification of Mental Health Specialist V is more in line with the type of duties being performed. He is requesting that a desk audit be conducted on her position.

#2) He is also requesting to re-classify a Mental Health Specialist III position to a Mental Health Specialist IV.

#3) Requesting to reclassify an ASA II to and ASA III.

A vote was taken and all requests were approved.

### **IV. Revision of Job Spec for Technical Service Specialist III.**

**Dillihay-** brought the Committee up to date on Administration's request to fill Bob Cunningham's position in Technical Services as he would be retiring effective January of 2007. The previous incumbent before Bob was classified as an architect. The request was not to limit the disciplines to architecture only, but to include other disciplines in the job specification such as Civil Engineering, Construction Management, and Architectural Technology. In addition, it was noted that no “substitution of experience” would be allowed for the required degrees.

A vote was taken and the request was approved.

Ervin – gave a quick update on the Wage and Class Study. The Contract has been completed for the Segal Company and is waiting to go before the Legislative Review Committee at the next scheduled meeting of (January 10<sup>th</sup>).

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
February 14, 2007

Members in Attendance:

John Ziegler  
Otha Dillihay  
Eranell McIntosh-Wilson  
Susan Chambers  
Paul Bisbee

Members Absent: Kent Hunt  
Paul Bisbee

The meeting was called to order by: Chairman, Henry Ervin.

- I. Minutes of the last meeting were approved.
- II. Approved copies of the Job Evaluation Guidelines were disseminated to members
- III. Chairman Ervin gave an update on Wage and Class. The legislative review committee approved the \$192,000 contract. A tentative date to meet with consultants has been scheduled for March 20<sup>th</sup>. Susan Chambers mentioned that she would like for the Facility Directors to also have a chance to attend. There are some particular classes of concern which she feels they need to have input.

Ervin stated that there will probably be two meetings. The first one would be with the Commissioner and Associates, while the second one would be with the Facility Directors and their Personnel Managers.

Ervin stated that Joe Long was conducting a survey on law enforcement officer salaries and would be getting the information to us soon.

- IV. The Committee voted and approved to suspend any further job audits on exempt classifications until the completion of Wage and Class
- V. The proposal to utilize the B.S. Trainee classification for Deaf Services was introduced. This position would be used as a means of attracting individuals who have completed training programs at the Bachelor level and preparing them for career ladder positions. It was voted on and approved with the recommendation to increase the salary range from 44 to 67. The second request from Deaf Services was a recommendation to increase the salary range of the MH Interpreter II classification from 74 to 79. It was voted on and approved.

After much discussion regarding the Deaf Services request, Susan Chambers stated she felt it was important to be specific in identifying the class by calling it "MH Deaf Interpreter Trainee," rather than B.S. Trainee. She further stated that it might be a good idea to have Charlene Crump to come in and address some of the specific needs in their area and why this position is critical.

The motion was withdrawn to approve the original request for a "Student Trainee" with the stipulation to re-name it to "MH Interpreter Trainee."

- VI. The Committee voted to defer any action to increase the salary range of the Psychological Assistant from 57 to 64 until after the completion of Wage and Class.
- VII. There was considerable discussion regarding the qualifications of the Technical Service Specialist III and the request to lower the salary range from 83 to 81. It was noted that the previous incumbent in this position was an Architect at range 85. The concern was: given the qualifications for the position, whether or not the department would be able get someone to come and work for the lower salary.
- VIII. The Committee was presented financial information, as requested showing the impact of increasing the starting pay step to 7 for both

RN's and LPN's. The item was voted on and approved. The effective date of this change would be 3/16/07.

- IX. Job Specifications for the RN IV and RN V were given to Committee members for their review. There was considerable discussion regarding the nurse practitioner class being a different class from the DON. Susan Chambers mentioned she would like to see a copy of the spec for the RN VI in order to have a frame of reference to compare. The committee was made aware that all specifications for nurses were being revised and Personnel Managers are in the process of making recommendations for the RN VI.

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

(Corrected)  
**MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
July 12, 2007**

Members in Attendance:

David Bennett  
David Jackson  
Susan Chambers  
Pat Martin  
Paul Bisbee  
Kent Hunt

The meeting was called to order by: Chairman, Henry Ervin.

**I. Minutes of the last meeting were approved.**

- II. A brief overview** was given for new members of the JEC. Each was given a copy of Policy #60-22 which outlines responsibilities of the committee and its structural makeup. Chairman Ervin also gave some historical background regarding the formation of the Committee and its purpose. He in turn indicated that up until now, all Committee meetings were conducted by the Chairman. Now that the department has an Assistant Director of HR, the Assistant, would chair meetings in the absence of the Director. Associate Commissioner Bennett noted that the Associate Commissioner for Administration was not referenced in the policy. It was Recommended that the policy be amended to read as follows:

*Amend letter "b" by eliminating "or designee" and add letter "j" to read: "Associate Commissioner of Administration or designee." Amend #2 to read: "The Committee will consist of ten members. Amend #7 to read: "The HR office or Personnel Office has the responsibility of disseminating approved actions and minutes of the Job Evaluation Committee to the Commissioner, Facility Directors, and the Associate Commissioners."*

*A motion was introduced and all changes were approved.*



### III. Survey on Law Enforcement Officers

Susan Chambers stressed the importance of addressing this issue and gave some background information regarding the differences in pay for law enforcement officers. She proposed that the committee examine the pros and cons of making recommendations for changes now as opposed to waiting for the completion of Wage and Class. There was considerable discussion regarding this matter. Some concerns were that other classes might also see the need for their ranges to be increased. It was noted that Wage and Class recommendations will be presented to the JEC upon completion of the study. A draft report from Segal is due by August 17<sup>th</sup>. Ervin agreed to contact Segal and report back to the Associate Commissioners.

*A motion was introduced to table the Law Enforcement item until Segal was contacted to see if they compiled salary information on police officers. If they have information, the Committee agreed to compare their data with the information already gathered by our department. A vote was taken and the item was tabled.*

### IV. Manager of Employee Relations

As part of the Action Plan to address overtime for the department, it was recommended that a Manager of Employee Relations position be established. David Bennett noted one correction that needed to be made in the job specification, namely that the individual would report to the "Associate Commissioner for Administration," instead of "Chief of Staff." *A motion was introduced to establish a Manager of Employee Relations position, a vote was taken and the item was approved.*

The Committee reviewed the spec for the Coding Compliance Specialist. It was noted that the position had been established and announcing the position will be left to the facilities.

### V. Hab Treatment Coordinator

There was discussion regarding the proposal to lower minimum qualifications for the "I" level from a Master's degree to a Bachelors

degree. The "II" level proposed qualifications would be a Master's plus one year experience and the "III" level a Master's with at least three years of experience. It was noted that the Exempt Selection Procedure has specific definitions to indicate levels of experience on job specs. For example: some (12 months or more), experience (24 months or more), considerable (48 months or more), and extensive (72 months or more). Any recommendations for changes should follow already established criteria.

It was noted that Segal sent Wage comparators to various entities with the higher level qualifications, and making changes to lower qualifications at this point would not be an accurate comparison of the data we receive.

*A motion was introduced, a vote was taken and approved to table any changes until after completion of Wage and Class. MR Associate Commissioner wanted the minutes to reflect that she was not in agreement.*

#### **Facility Director (Qualifications)**

*A motion was introduced, a vote taken and it was approved to table the item until the next meeting.*

### **VI. Substitution of Degree for required work experience**

The Committee was informed of the department's policy for substituting experience for the required degree. With many applicants now having obtained advanced degrees, the question has arisen, do we substitute the degree for the required experience."

*A motion was introduced, a vote was taken and the item passed to allow substitution of the degree for the required level of experience. It was noted that the Exempt Selection Procedure needed to reflect these changes.*

Chairman Ervin took the opportunity to thank Committee member Dr. Paul Bisbee as this would be his last meeting before his impending retirement.

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

**MINUTES OF THE  
JOB EVALUATION COMMITTEE MEETING  
HELD  
October 26, 2007**

Members in Attendance:

David Bennett  
David Jackson  
Susan Chambers  
Pat Martin  
Henry Ervin

Absent:

John Ziegler  
Kent Hunt

The meeting was called to order by: Chairman, Henry Ervin.

- I. Minutes of the last meeting were approved.**
- II. Salary Information and Recommended Range Increases**
  - a. Security Officers**

The Committee reviewed the proposal for DMH/MR Security Officers. There was some discussion regarding the proposed title change using "MH" Pat Martin talked about the future trend of using more "People First" language. She also mentioned the proposal to change the name of the division from MR to the "Division of Intellectual Disabilities." David Jackson mentioned that there could be some legal ramifications to consider before making the change.

*A motion was made and seconded to accept the recommendations pending the financial impact on the department. The item was approved.*

**b. Administrative Assistants**

Mr. Bennett informed the group that some notable disparities were identified within the Administrative Assistant series. It was noted that

this series was not one of the benchmarked classes targeted by the Segal Group. The VI and VII classes had previously been utilized by Associate Commissioners and the Commissioner. Some recent changes had indicated individuals doing comparable work had been changed to the Administrator I series. He made a recommendation to increase the salary range of the Administrative Asst. VI from range 63 to range 67, making it comparable to the Administrator I. In addition, one incumbent (Kathy Thompson) in the Administrative Asst. VII class would be brought up to the same range as others within the same class from a range 66 to range 68. A cost analysis was provided for the Committee to review.

*A motion was made and seconded to accept the recommendations. The item was approved.*

#### **c. Physicians Information**

Henry Ervin informed the group that Jackie Graham had just verbally approved the proposal for the doctors at Searcy Hospital. The proposal outlined a one time payment to Physician II's and III's. They would be paid straight time for on-call hours for September and October. In addition, there would be a \$45 differential for "*after-hours on-site*. Note this change in which replaces the term, "on-call." It was also approved to increase salary ranges for all Physicians for the department to bring them in line with Public Health at range (89), effective November 1<sup>st</sup>. Psychiatrists I's, II's, and III's would be given the option of being able to work "*on-call*." It was recommended that the salary range for Dentists also be increased. *The Dentist I* from range 83 to 85 and *the Dentist II* from range 85 to range 87. The financial impact for Psychiatrists totaled \$ 213,000 and the total for Physicians totaled \$147,146.20. Total cost for both (\$360,000). Additional cost (Searcy) \$204,561 and dentists (\$17,000).

*A motion was made and seconded to accept the recommendation. The item was approved.*

### III. Creation of New Exempt Classification

David Jackson stated that more time was needed for gathering information regarding this particular item (Director of Certification) and requested action be deferred until a later date. Everyone was in agreement.

### IV. Changes in Job Specifications

There was considerable discussion regarding the distinction between large and small facilities. For the *Asst. Facility Director*, under the definition: "directing services and programs within the mental health system or at a departmental facility of 150 beds or more." Under qualifications: it was recommended to change "experience in an administrative capacity in the field of mental health/mental retardation" to "experience in a hospital and/or a developmental center setting." It was also recommended that the substitution clause be removed.

It was recommended that the same changes be made to the subsequent levels as follows: *Facility Director I*, (less than 150 beds) and experience in a hospital and/or a developmental center setting.

*Facility Director II* (150 beds or more). Under Qualifications: recommended change from "considerable 48 months" to "extensive 72 months or more" Under Necessary Special Requirements: recommended change as follows: "Health Care Organizations and/or CMS (Center for Medicare/Medicaid Services).

A recommendation was made to table any action on the Facility Director III until a later date.

*A motion was made and seconded to accept all recommendations for changing the Facility Director I, and Facility Director II specs as outlined above, including tabling action on the Facility Director III. The items were all approved.*

#### b. Manager of Employee Relations

A recommendation to change the job spec for the Manager of Employee Relations to include such disciplines as "Social Sciences," and "Human Services."

*A motion was made and seconded to accept the recommendations. The item was approved.*

**c. Architect**

A recommendation was made to rename the **Technical Service Specialist III** to an **Architect**, in addition changes to the qualifications were to include the removal of the "engineering" discipline. Qualifications should read: "Graduation from an accredited college or university with a degree in Architecture. No changes were recommended for the experience components.

**d. RN Specifications**

There was considerable discussion regarding both the RN V and RN VI and that they both should be the same for the DON's at the facility level. Susan Chambers expressed her desire for the DON's at the Facilities to review the two specs, especially in the area of work being performed, before making any recommendations. A recommendation was made to table the item until DON's had an opportunity to review specs.

*A motion was made and seconded, the item was approved.*

The meeting was adjourned.

Minutes submitted by: \_\_\_\_\_  
Marilyn Benson

Minutes approved by: \_\_\_\_\_  
Henry E. Ervin

**Minutes of Personnel Manager's  
Meeting  
Tuesday, November 6, 2007**

Doug Lunsford addressed the group regarding new guidelines and procedures for donated sick leave. While the Personnel managers were meeting, other facility personnel were being brought up to date on the various changes.

Associate Commissioner Bennett briefed the Personnel Managers on the new overtime policies and procedures. He talked about the plan of action (done on a voluntary basis). He mentioned that he and Henry Ervin had been traveling to various facilities to gather input on how best to address the situation. He met with other Associate Commissioners and Chief of Staff to bring them up to date. During the next several months, he will be relying heavily on IT to establish a database to better manage procedural matters.

The latest information from Segal was disseminated to the group. Joe Long mentioned that he had met with Mike Mathis and Jim Elliott the day before to discuss the Administrator classification. They identified it as being one of the more difficult ones considering so many do a wide array of duties. Mike stated that our Personnel Managers will need to closely examine Segal recommendations from the standpoint of identifying which classes to delete and expand.

Marilyn Benson informed the group that the job specifications the department receives from Segal will be in the same format as the ones currently being used by the DMH/MR.

There was considerable discussion regarding the "substitution of experience," and how to evaluate job specifications that include, "any combination of training and experience." The general consensus of the group was to eliminate this phrase because it is too vague and state specifically what degree would be required.

Lynn Hubbard questioned why substitution was allowed for some classifications and not for others. It was noted that the Administrator classifications and the Human Resources classifications allowed for substitution.



Mike Mathis and Greg Ethridge both acknowledged that the growing trend and demand for higher education only necessitates eliminating the substitution clause from many higher level classifications.

Joe Long pointed out that Segal errored in comparing the Facility Director with the Activity Program Aide. He noted they also recommended that the Asst. Facility Director salary range be lowered.

There was a question as to whether or not employees could submit Form 40's at this late stage in order to assist with the development of job specifications.

Jim Elliott questioned why the entire Administrator series could not be eliminated and just accept whatever recommendations that Segal proposes.

Henry Ervin stated that it would be better to simply delete whatever classes which need to be eliminated to keep from creating any additional holdover ranges. As everyone knows one of the main problems created by the last Wage & Class study was collapsing too many positions. Many positions could be identified as having comparable merit counterparts.

He made it clear to the group that once Segal recommendations are implemented, no one currently in the system would be adversely affected. They would remain in their current classification in a holdover position and when they vacated the position, it would then be filled with the recommended classification.

There was a mistake noted on Table I page #8, the Community Service Specialist I and the Senior are both at the same range (71).

Others pointed out concerns ranging from different areas such as the ones listed below:

- Promotional classes for Attorneys
- How to address the issue with small -vs- large facilities
- Target date for implementing recommendations (financial impact)
- Creating new classifications when needed as opposed to trying to fit people into classes that may not be appropriate

A decision was made to review the Administrator and Administrative Assistant classifications first. A date was set for the next meeting (Wednesday, November 14<sup>th</sup>) @ 10 o'clock.

The group was informed that Lynn Hubbard should be the point of contact when vacancies need to be removed from the website.

The meeting was then adjourned.

Minutes submitted by: Marilyn Benson  
Marilyn Benson

Approved by: Henry E. Ervin  
Henry E. Ervin

Form 13P  
Revised (1/1/1998)

EMI JYEE PERFORMANCE APPRaisal  
STATE OF ALABAMA  
Personnel Department

**PREAPPRAISAL**

Employee Name: MARILYN B. BENSON Social Security Number:                       
Agency: 061/MENTAL HEALTH & RETARDATION Division: 404E/CENTRAL OFFICE ADMIN  
Classification: PERSONNEL SPECIALIST III Class Code: H3000  
Period Covered From: 04-01-2003 To: 04-01-2004

**RESPONSIBILITIES/RESULTS:** Responsibilities and results on which an employee will be rated should be listed below. These areas should be discussed with the employee during the Preappraisal session at the beginning of each appraisal year. Please refer to the Performance Appraisal Manual for instruction on how to develop responsibilities and results.

**RESPONSIBILITIES/RESULTS**

1. Maintains exempt classifications and pay structure by examining positions, establishing, revising, deleting or combining classes and making recommendations in order to comply with federal, state, and local guideline of employment.
2. Provide technical support to the Job Evaluation Committee by researching salary information, facilitating requests from facilities, disseminating minutes and contacting available resources in order to assist in the reallocation of classes, filling vacancies and ensuring that the most qualified personnel are recruited and selected for job placement.
3. Coordinate wage and salary information for non-merit classes by developing questionnaires, surveys, analyzing positions and pay relationships; collecting, compiling and summarizing salary data in order to make recommendations for change and ensure the Department remains competitive in its development of a solid wage, salary, and benefits schedule.
4. Conducts job audits on non-merit classification with incumbents, supervisors, departmental staff and other subject matter experts by conducting interviews, reviewing job duties, writing and revising class specifications and making recommendations for appropriate allocation of classes and ensuring compliance with governmental rules and regulations.
5. Provide supervision for Personnel Assistants I/II and Administrative Support Assistant II to ensure that personnel services are provided in an adequate and timely manner.
6. Completes other personnel/administrative functions in addition to regular job functions while adhering to Standard Operating Procedures and completing projects within established time frames.
7. Serves as Acting Director during the absence of the Director of Human Resources to ensure and maintain continuity of personnel services and staff.



**(EXTENDED DEADLINE)****RE-ANNOUNCEMENT OF INTENT TO FILL A NON-MERIT POSITION  
EQUAL OPPORTUNITY EMPLOYER**

<b><u>JOB TITLE:</u></b>	Departmental Assistant Personnel Manager	<b><u>NUMBER:</u></b>	05-27
<b><u>JOB CODE:</u></b>	H5500	<b><u>DATE:</u></b>	9/15/05
<b><u>SALARY RANGE:</u></b>	80 (\$46,820- \$71,380)	<b><u>POS#:</u></b>	8813339
<b><u>JOB LOCATION:</u></b>	Department of Mental Health And Mental Retardation 100 North Union Street Montgomery, Ala. 36130		

**QUALIFICATIONS:** Bachelor's degree in Human Resource Management/Personnel Management, Business Administration, Public Administration, or related field. **Extensive experience (72 months or more)** working in a professional personnel management position, plus experience (24 months or more) in a supervisory capacity.

*Preference will be given to individuals with:*

- *Master's degree in any of the above specified fields of study.*
- *Work experience in the governmental/ public sector*
- *Work experience in a healthcare setting*

**KIND OF WORK:** Assists with day to day operation in planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program for the Department of Mental Health and Mental Retardation. Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action. Research and identify grant funding sources to assist coordinating efforts regarding Wage and Classification Studies. Maintains on-going classification and pay information from governmental agencies and private sector. Advises Director of Human Resources and assists in making recommendations to department heads, administrators, supervisors, and employees on rules, regulations, and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals. Conducts and/or attends staff meetings, state personnel meetings, or personnel officer meetings. Gathers information and prepares budget for the Central Office Personnel Division and monitors expenditures. Coordinates various supervisory training for departmental Personnel Officers and makes oral presentations as needed.



ADMH 08-00018

Departmental Assistant  
Personnel Manager  
#05-27  
Page 2

Serves in the absence of the Director of Human Resources by providing assistance regarding personnel and administrative functions and serves on various committees and task forces as assigned. Supervises clerical and para-professional staff assigned to Human Resources and conducts performance evaluations.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES:** Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations. Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development. Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and ability to interpret state and federal rules and regulations. Ability to plan, organize, direct, and evaluate the work of others. Thorough knowledge of interviewing techniques. Ability to advise and make recommendations regarding employment selection procedures. Ability to make presentations and convey ideas and opinions effectively, both orally and in writing. Ability to gather, correlate, and analyze facts, and recommend solutions. Ability to provide technical assistance in the area of expertise. Ability to research and identify grants and funding resources. Ability to conduct and coordinate various meetings and chair committees. Ability to establish and maintain effective working relationships with departmental personnel at all levels and with employees in other departments as well as the general public.

**METHOD OF SELECTION:** Applicants will be rated on the basis of an evaluation of their training, experience and education, and should provide adequate work history identifying experiences related to the duties and minimum qualifications mentioned above. All relevant information is subject to verification.

**HOW TO APPLY:** Use an official application for Professional Employment (Exempt Application), which may be obtained from this office, other Department of Mental Health and Mental Retardation facility Personnel Offices, or at [www.mh.state.al.us](http://www.mh.state.al.us). **Only work experience detailed on the application form will be considered.** Additional sheets, if needed, should be in the same format as the application. **Resumes will not be accepted in lieu of an official application.**

**ALL APPLICATIONS SHOULD BE RETURNED TO:**

W.D. Partlow Developmental Center  
Attention: Mr. Mike Mathis (Personnel Director)  
1700 University Blvd.  
Tuscaloosa, Ala. 35406-1730

**DEADLINE FOR SUBMITTING APPLICATIONS:** October 28, 2005.

COPIES of licenses/certifications if applicable should be forwarded/furnished during interview, an official copy of your academic transcripts must be forwarded by the college or university to the personnel office at the above address.



John Houston  
P.O. Box 65  
Coosada, Alabama 36020  
(334) 285-0854

#### EDUCATION

1971	Auburn University	BA
1975	University of Alabama	MSW (Planning/Administration)
1975	University of Alabama	MA (Special Education/MR)

#### EXPERIENCE

Jan 29

#### 1986-PRESENT STATE DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION

##### Executive Assistant to Commissioner (1995-Present)

Responsibilities include: serving as Departmental liaison to other state and federal agencies, including representing the Commissioner on councils, boards, or interagency committees; assisting the Commissioner in managing administrative assignments to appropriate department staff; providing assistance, as needed, on legislative activities and departmental and interagency planning activities; performing various administrative assignments such as general oversight of routine transactions with other executive branch offices; serving as contact person for the Commissioner's Office with human services agencies, juvenile and other state court personnel, families, clients, advocates, and others who have complaints or concerns related to services. During this time I also assisted the Associate Commissioner for Administration with a review of essential functions and staffing needs in the Central Office. Other responsibilities include serving as proxy for the Commissioner on the Governor's Interagency Coordinating Council and the Department of Youth Services Board and representing the Commissioner on the Finance Committees for both bodies.

##### State Children Services Facilitation Team (SCSFT) (1993-Present)

Other responsibilities include serving as the DMH/MR representative of the State Children Services Facilitation Team (SCSFT), and as its Chairperson in 1993-94, 1996-97, and 1997-98. Responsibilities of the SCSFT include working with the Departments of Youth Services, Human Resources, Education, Public Health and representatives of the Association of Chief Juvenile Probation Officers regarding planning for and developing services for Multiple Needs Children (MNC) (i.e., children requiring services from two or more agencies and at risk of out-of-home placement or movement to a more restrictive placement). The State SFT is responsible for developing policies and procedures for state and county SFTs, working with juvenile courts and county SFTs to plan for and coordinate services to MNC, and for securing and coordinating funding from various state and federal sources to provide needed services to these children. Multiple needs children typically are adjudicated in juvenile court proceedings although this MNC adjudication is not required for State or County SFTs to address the needs of these children.

Responsibilities of the Chairperson include: presiding at monthly meetings of the SCSFT; providing general supervision of the State Multiple Needs Child Coordinator and SCSFT functions such as fiscal management of interagency accounts with contributions from five child-serving agencies; negotiation of collaborative interagency service and funding agreements to provide services to multiple needs children; representing the SCSFT on occasions such as collaborative planning or training activities, and in juvenile court proceedings or related activities.

Plaintiffs' Exhibit

80

ADMH 01-08-00007

Executive Assistant to Associate Commissioner/Mental Illness Division (1991-1994) In general, responsibilities in this position were very similar to those enumerated above with administrative responsibilities focused on MI Division activities and liaison responsibilities approximately equally divided between MI and Department wide concerns.

Executive Assistant to Associate Commissioner/ Administrative Division (1986-1991)

Again, responsibilities in this position were very similar to those enumerated above. I was directly involved in Divisional planning, budget preparation and management, policy development and implementation, personnel and related matters and gained a detailed knowledge of all bureaus and offices in the Administrative Division. I was responsible for managing the Administrative Division in the Associate Commissioner's absence. During this time, I also coordinated an organizational review of all units (Bureaus, Sections, and Offices) within the Administrative Division to review essential functions, staffing requirements, and organizational relationships.

Nov 1 Jan  
1980-1986

ALABAMA INSTITUTE FOR DEAF AND BLIND

Director, Sunbelt Regional Center, multi-state federally funded program providing technical assistance and fiscal management to state agencies providing services to multi-handicapped sensory impaired children. Negotiated technical assistance and service contracts with state agencies and prepared and submitted federal grant application. Contract manager/fiscal administrator for 40+ programs in ten states. Served as liaison to program and agency finance staff in each state to assure implementation of program activities and monitor fund utilization. Utilization of federal funding increased from 72% to 98% during the first year.

Director, Student Services at E. H. Gentry Technical Facility (Education/Rehabilitation facility for adult (16+) sensory impaired). Student Services Department included social services, case management, dormitory/residential programs, recreation/extended day programs and management of all student financial accounts in adult programs. Responsibilities included supervision of 20+ professional and clerical staff, program design and development, budget development and control, and grant development and management. Significant accomplishments included design and implementation of a facility wide case management system, and substantial expansion of extended day programs and recreational activities.

June 26<sup>th</sup> 1979-1980

CETA MANAGEMENT COORDINATION PROJECT AU.

Research Associate providing technical assistance to state agencies, educational institutions regarding employment training programs. The project focused on programs serving individuals with disabilities.

1977-1978

CHATTANOOGA-HAMILTON CO. ASSN. FOR RETARDED CITIZENS

Executive Director for private non-profit community based program for persons who are mentally retarded and for their families. Administrator/supervisor of program staff performing functions of public information/education, advocacy, individual/family counseling, crisis intervention, and emergency shelter.



April  
11/2  
Aug 15/20  
1975-1977

BRYCE HOSPITAL, DEPARTMENT OF MH/MR

Advocate/Director of Advocacy Services for internal advocacy program for Bryce patients. This position functioned under the supervision of the Hospital Director. Investigated patient complaints and/or supervised other advocacy staff in investigation of complaints regarding alleged abuse or other patient or family concerns; prepared reports of incident investigation and/or program review activities; developed data base of patient complaints and concerns and conducted analysis of issues by program area.

Dec 29, 1972-1973  
Sept 30

MENTAL RETARDATION SERVICES OF AL/UNIVERSITY OF ALABAMA

Advocate/Coordinator of Advocacy for clients in 60 bed residential MR program on campus of the University of Alabama. Clients were residents of Partlow. Investigated patient complaints and/or supervised other advocacy staff in investigation of complaints regarding alleged abuse or other patient or family concerns; performed program review activities; monitored caseload of individual client program plans.

chairman, or a majority of the members.

(c) The governor shall appoint, as the initial board of trustees, four (4) members for a term of one (1) year; four (4) members for a term of two (2) years; four (4) members for a term of three (3) years; all trustees shall take office effective upon appointment. No trustee shall serve more than three consecutive three year terms; provided, however, that trustees shall continue to serve until their successors have been appointed. Subsequent appointments shall be made for a period of three (3) years except that vacancies shall be filled by the governor for the unexpired term only.

(d) The trustees shall receive \$100.00 per day and mileage expenses while attending meetings of the board of trustees or while engaged in other official duties at the request of the governor or board of trustees.

**Author:** Division of Mental Retardation, DMH/MR

**Statutory Authority:** Code of Ala. 1975, §22-50-5, 22-50-6, 22-50-8, 22-50-16.

**History:** Filed September 5, 1984. **Repealed and Replaced:** Filed November 5, 1992.

**580-1-1-.05 Department Of Mental Health And Mental Retardation.** The governor and the commissioner of mental health and mental retardation are constituted by law as a public corporation to be known as the Department of Mental Health and Mental Retardation.

**Author:** Division of Mental Retardation, DMH/MR

**Statutory Authority:** Code of Ala. 1975, §22-50-4.

**History:** Filed September 5, 1984. **Repealed and Replaced:** Filed November 5, 1992.

**580-1-1-.06 Authority Of Commissioner.** The authority of the department, and its commissioner, is set forth in Code of Ala. 1975, §22-50-9 and §22-50-11 and includes but is not limited to the following:

(1) The Department of Mental Health and Mental Retardation through its commissioner is hereby authorized to act in any prudent way to provide mental health, substance abuse services and mental retardation services for the people of Alabama.

(2) To authorize and set up state plans to control and treat any and all forms of mental and emotional illness and any and all forms of



mental retardation.

(3) To supervise, coordinate, and establish standards for all operations and activities of the state related to mental health and mental retardation and the providing of mental health services and mental retardation services; and it is authorized to receive and administer any funds available from any source for the purpose of acquiring building sites for, constructing, equipping, maintaining or operating mental health centers, and community retardation programs or facilities or institutions for the purpose of providing mental health services and mental retardation services.

(4) The single state agency of the state to receive and administer, through its commissioner, any and all funds available from any source for purposes of training, research and education in regard to all forms of mental and emotional illness and all forms of mental retardation through its commissioner.

(5) To enter into contracts.

(6) To develop programs for the aged.

(7) To appoint advisory councils.

(8) The Mental Health and Mental Retardation Department is authorized to establish and promulgate reasonable rules, policies, orders and regulations providing details of carrying out its duties and responsibilities, including bylaws for its own organization, government and procedures.

(9) To purchase or lease land or property.

(10) To determine reasonable fees for services rendered to the public.

(11) To establish and promulgate reasonable minimum standards for the construction and operation of its facilities.

(12) To inspect any institution or facility providing any kind of treatment or care for those suffering from mental or emotional illness or mental retardation, and to certify any such institution or facility which meets its minimum standards.

(13) To establish and collect reasonable fees for necessary inspection services.

(14) To provide hearings for those claiming to be damaged by decisions of its employees.

(15) To file and prosecute suits.

(16) To accept gifts, trusts, bequests, etc.

(17) To receive moneys by way of fees for its services.

**Author:** Division of Mental Retardation, DMH/MR

**Statutory Authority:** Code of Ala. 1975, §§22-50-9, 22-50-11.

**History:** Filed September 5, 1984. **Repealed and Replaced:** Filed November 5, 1992.

**580-1-1-.07 Statutory Authority.** The State Department of Mental Health and Mental Retardation operates under the provisions set forth in the Code of Ala. 1975, Title 22, Chapter 50.

**Author:** Division of Mental Retardation, DMH/MR

**Statutory Authority:** Code of Ala. 1975, §§22-50-9, 22-50-11.

**History:** Filed September 5, 1984. **Repealed and Replaced:** Filed November 5, 1992.

**580-1-1-.08 Organization.** Department of Mental Health and Mental Retardation is under the direction, supervision, and the control of the Commissioner, who is appointed by the Governor.

(1) The structural organization within the Department of Mental Health and Mental Retardation complies with the Code of Ala. 1975, §22-50-2, in that the Department is to be composed of the Alabama mental health and mental retardation commissioner and such divisions, bureaus, offices and administrative sections as the mental health and mental retardation commissioner may direct.

(2) The State Department of Mental Health and Mental

Retardation is composed of the following primary organizational components:

(a) Commissioner. The Mental Health and Mental Retardation Commissioner is the designated supervisory official for the Mental Health and Mental Retardation Department which is the designated coordinating and supervisory agency for mental health, substance abuse/dependency and mental retardation services throughout the State of Alabama. The Commissioner's office is concerned with maintaining basic management coordination to deal with administrative services of the department and is the chief decision maker and strategist to insure maximum mental health services for the mentally ill, substance

ALABAMA DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

PERSONNEL ADMINISTRATIVE CODE

CHAPTER 580-6-36 NON-MERIT POSITIONS

TABLE OF CONTENTS

**580-6-36-.01 Statutory Authority**

**580-6-36-.02 Personnel Administration**

**580-6-36-.03 Recruitment**

**580-6-36-.04 Affirmative Action Plan**

**580-6-36-.05 Exempt Selection**

**580-6-36-.06 Probationary Period**

**580-6-36-.01 Statutory Authority.** The Department of Mental Health has the statutory authority to establish non-merit positions and the authority to establish its own personnel policies and salary schedules for all of its employees.

**Author:** Division of Mental Retardation, DMH/MR.

**Statutory Authority:** Code of Ala. 1975, § 22-50-2.

**History:**

**580-6-36-.02 Personnel Administration.** The Department shall publish policies, procedures, and regulations pertaining to the administration of employment in the exempt service. These publications shall comply with State Law and executive and judicial orders and directives. The Department of Mental Health and Mental Retardation shall establish and promulgate guidelines governing the selection of exempt employees. The recruitment, selection, and advancement of exempt employees will be based upon job related factors.

**Author:** Division of Mental Retardation, DMH/MR.

**Statutory Authority:** Code of Ala. 1975, § 22-50-40.

**History:** Filed September 30, 1982. **Amended:** Filed October 30, 1992; filed December 15, 1992.

**580-6-36-.03 Recruitment.** Recruitment of personnel for exempt positions is not supported by the State Personnel Department. The DMH/MR shall initiate and maintain aggressive recruitment efforts in confirmed areas of staff requirements/need. Such efforts shall be consistent with the DMH/MR Affirmative Action Plan especially as it relates to minority employment goals.

**Author:** Division of Mental Retardation, DMH/MR.



**Statutory Authority:** Code of Ala. 1975, § 22-50-11.

**History: Amended:** Effective May 31, 1988; effective July 6, 1988; filed September 30, 1982;  
**Amended:** Filed October 30, 1992; filed December 15, 1992.

**580-6-36-.04 Affirmative Action Plan.**

(1) The Department shall conduct all personnel activities without regard to race, religion, national origin, color, age, sex, or disability, except where sex or physical ability constitute a bona fide occupational qualification. The Department shall publish and implement an affirmative action plan to insure this policy.

(2) The Department and each of the institutions within it shall maintain centralized records of all applicants for professional positions. (Federal Court Order 2709-N, August, 1976).

(3) Applicants for professional positions shall be informed of each position for which they may qualify, and shall be advised of the steps necessary to apply for such positions. (Federal Court Order 2709-N, August, 1976).

**Author:** Division of Mental Retardation, DMH/MR.

**Statutory Authority:** Code of Ala. 1975, § 22-50-40.

**History:** Filed September 30, 1982. Filed March 23, 1988; Filed October 30, 1992. **Amended:** Filed December 15, 1992.

**580-6-36-.05 Exempt Selection.** The Department of Mental Health/Mental Retardation will employ individuals to exempt positions only through an open and competitive process. Job announcements will be made before the appointment of any individual into a vacant position. The recruitment, selection, and advancement of exempt employees will be based upon job related factors.

**Author:** Division of Mental Retardation, DMH/MR.

**Statutory Authority:** Code of Ala. 1975, § 22-50-11.

**History:** Filed September 30, 1982. **Amended:** Filed October 30, 1992; filed December 15, 1992.

**580-6-36-.06 Probationary Period.** The Department of Mental Health and Mental Retardation recognizes that a period of from six months to twelve months following employment of an exempt employee will constitute a probationary period. Individuals terminated during this period do not have the right to appeal.

**Author:** Division of Mental Retardation, DMH/MR.

**Statutory Authority:** Code of Ala. 1975, § 22-50-11.

**History:** Filed September 30, 1982. **Amended:** Filed October 30, 1992; filed December 15, 1992.



# Nursing Home Administrator I

Job Code: A4100

Range: 79

## Definition:

This is responsible professional work in managing a small long-term care facility (nursing home) operated by the Department of Mental Health and Mental Retardation.

Employees in this class are responsible for ensuring that the standards of adequate patient care and treatment are maintained. Work is performed with a high degree of independence within established policies and regulations. Work is generally accepted as final, but may be reviewed by the Facility Director.

## Examples of Work Performed: (May not include all duties performed)

- Responsible for the general management and day to day operation of a small long-term care nursing facility.
- Ensures that rules and regulations of the State Board of Health, Department of Licensure and Certification, the Alabama Medicaid Agency, and JCAHO are in compliance regarding the operation of a facility
- Responsible for development and implementation of policies that conform to established standards mental health practice
- Ensures that standards of quality patient care and treatment are maintained
- Assists in the preparation of the annual budget and provides financial reports as required
- Establishes and maintains effective working relationships with community professionals, lay groups, official and volunteer agencies
- Counsels and disciplines facility employees consistent with hospital policies and procedures

## Knowledge, Skills, and Abilities:

- Ability to plan, organize, and prioritize work activities
- Knowledge of mental health systems and service delivery
- Knowledge of administration and management in the field of mental health/mental retardation
- Knowledge of laws, rules, and regulations to include JCAHO, Medicaid, and RENA
- Ability to conduct and supervise budgetary matters
- Ability to delegate administrative and professional assignments to subordinates and to evaluate work



9/06

ADMH 01-06-00105



Page 2

Title: Nursing Home Administrator I

**Qualifications:**

Graduation from a four-year college or university with a bachelor's degree in Hospital Administration, Health Care Administration or Public Administration. Experience (24 months) in the mental health field, including progressively responsible supervisory or administrative experience related to the area of specialization.

**Necessary Special Requirements:**

Licensure or eligibility for licensure as a Nursing Home Administrator with the Board of Examiners of Nursing Home Administrators of the State of Alabama.

Other job-related education and/or experience may be substituted for all or part of the basic requirements.

9/06

ADMH 01-06-00106

# Nursing Home Administrator II

Job Code: A4200

Range: 80

## Definition:

This is highly responsible professional work in managing a large long-term care facility (nursing home) operated by the Department of Mental Health and Mental Retardation.

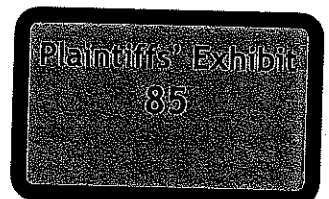
Employees in this class are responsible for ensuring that the standards of adequate patient care and treatment are maintained. Work is performed with a high degree of independence within established policies and regulations. Work is generally accepted as final, but may be reviewed by the Facility Director.

## Examples of Work Performed: (May not include all duties performed)

- Responsible for the general management and day to day operation of a large long-term care nursing facility.
- Ensures that rules and regulations of the State Board of Health, Department of Licensure and Certification, the Alabama Medicaid Agency, and JCAHO are in compliance regarding the operation of a facility
- Responsible for development and implementation of policies that conform to established standards mental health practice
- Ensures that standards of quality patient care and treatment are maintained
- Assists in the preparation of the annual budget and provides financial reports as required
- Establishes and maintains effective working relationships with community professionals, lay groups, official and volunteer agencies
- Counsels and disciplines facility employees consistent with hospital policies and procedures

## Knowledge, Skills, and Abilities:

- Ability to plan, organize, and prioritize work activities
- Knowledge of mental health systems and service delivery
- Knowledge of administration and management in the field of mental health/mental retardation
- Knowledge of laws, rules, and regulations to include JCAHO, Medicaid, and RENA
- Ability to conduct and supervise budgetary matters
- Ability to delegate administrative and professional assignments to subordinates and to evaluate work



9/06

ADMH 01-06-00107

Page 2

Title: Nursing Home Administrator II

Qualifications:

Graduation from a four-year college or university with a bachelor's degree in Hospital Administration, Health Care Administration or Public Administration. Considerable experience in the mental health field, including progressively responsible supervisory or administrative experience related to the area of specialization.

Necessary Special Requirements:

Licensure or eligibility for licensure as a Nursing Home Administrator with the Board of Examiners of Nursing Home Administrators for the State of Alabama.

Other job-related education and/or experience may be substituted for all or part of the basic requirements.

# Administrator III

Job Code: A2000

Pay Range: 77

## Definition:

This is highly responsible professional administrative work in the mental health program for the State of Alabama.

Employees in this class perform a variety of responsible administrative duties requiring the exercise of a high degree of independent judgement. Work includes the supervision of professional and non-professional employees; however, the size and type of staff supervised will depend upon the specific nature of the assignment. Duties require frequent contact with high level officials in the state mental health system, other agencies, and the general public. Work is performed with considerable independence and is reviewed by an administrative supervisor through conferences, reports, and results achieved.

## Qualifications:

Graduation from a four-year college or university with a Master's degree in the academic area of specialization. Experience (24 months) in the mental health field, including progressively responsible supervisory or administrative experience (24 months) related to the area of specialization.

Other job related education and/or experience may be substituted for all or part of these basic requirements.



9/06

ADMH 01-06-00094

# Administrator IV

*Job Code:* A2500

*Pay Range:* 79

## Definition:

This is highly responsible professional administrative work of considerable scope and complexity in the mental health program of the state.

Employees in this class are responsible for directing a segment of the State's Mental Health program requiring the exercise of a high degree of independent judgement. Work includes the supervision of professional and non-professional employees; however, the size and type of staff supervised will depend upon the specific nature of the assignment. Duties require frequent contact with high level officials in the state mental health system, other agencies, and the general public. Work is performed with considerable independence and is reviewed by an administrative supervisor through conferences, reports, and results achieved.

## Qualifications:

Graduation from a four-year college or university with a Master's degree in the academic area of specialization. Considerable experience (48 months) in the mental health field, including progressively responsible supervisory or administrative experience (24 months) related to the area of specialization.

Other job related education and/or experience may be substituted for all or part of these basic requirements.



9/06

ADMH 01-06-00095

# Administrator V

Job Code: A3000

Pay Range: 80

## Definition:

This is advanced professional administrative work of extensive scope and complexity in the mental health program for the State of Alabama.

Employees in this class are responsible for directing and coordinating a large segment of the State's Mental Health program or assisting in the operation of a mental health facility. Work is characterized by the complex variety and scope of problems. Work includes the supervision of administrative and professional employees; however, the size and type of staff supervised will depend upon the specific nature of the assignment. Duties require constant contact with high level officials in the state mental health system, other agencies, and the general public. Work is assigned with general instructions and objectives by a high level administrative supervisor who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results.

## Qualifications:

Graduation from a four-year college or university with a Master's degree in the academic area of specialization. Considerable progressively responsible experience (48 months) in the mental health field, including progressively responsible experience (24 months) related to the area of specialization.

Other job related education and/or experience may be substituted for all or part of these basic requirements.



3/07

ADMH 01-06-00096

# Administrator VI

*Job Code: A3500*

*Pay Range: 83*

## **Definition:**

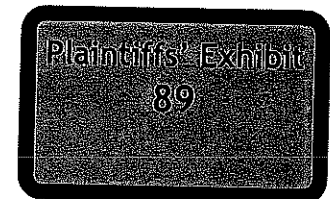
This is major professional administrative work of the highest level in the mental health program for the State of Alabama.

An employee in this class is responsible for directing a major segment of the State's Mental Health program. The emphasis of the position is on management of the assigned administrative division. Work is characterized by the complex variety and major scope of problems. Work follows the guidelines established by the administrative supervisor or applicable state and federal standards, but the employee is expected to exercise a high degree of initiative and ingenuity in dealing with administrative problems. Work involves the supervision of administrative employees; however, the size of staff supervised will depend on the specific nature of the assignment. Duties require constant contact with top level officials of the state mental health system, other agencies, and the general public. General supervision is received from a top-level administrative supervisor with whom the employee confers on unusual problems and who reviews work through conferences and reports for program effectiveness and conformity with objectives.

## **Qualifications:**

Graduation from a four-year college or university with a Master's degree in the academic area of specialization. Extensive experience (72 months) in the mental health field, including considerable progressively responsible experience (48 months) related to the area of specialization.

Other job related education and/or experience may be substituted for all or part of these basic requirements.



9/06

ADMH 01-06-00097



# Assistant Facility Director

Job Code: A4000

Pay Range: 83

## Definition:

This is highly responsible administrative work assisting in directing services and programs at a state mental health facility.

An employee in this class assists the director in planning, coordinating, and directing services and programs at a state mental health facility. Work involves participation in the development of overall plans and policies of the facility. Work also includes acting for the director in the director's absence. Supervision is exercised over staff of administrative and clerical employees engaged in various specialized activities. Work is performed under the general direction of the director, and is reviewed through conferences and reports for effectiveness and conformity with policies and objectives.

## Examples of Work Performed: ( May not include all the duties performed)

- Provides leadership and directs the work of professionals and administrative employees engaged in the management and the operation of management of programs and services in the absence of the Facility Director
- Serves as an appointing authority in the absence of the Facility Director
- Attends various meetings, conferences, and hearings and represents the facility director
- Consults with various officials concerning policies, rules, and regulations and laws when needed.

## Knowledge, Skills, and Abilities:

- Knowledge of administration and management in the field of mental health and mental retardation
- Knowledge of principles, methods, and techniques related to the treatment of the mentally ill/ and/or mentally retarded
- Knowledge of laws, rules, and regulations to include JCAHO, and Title XIX
- Ability to direct and evaluate the work of professional and administrative employees engaged in the management and operation of a mentally ill and/or mentally retarded facility
- Ability to communicate orally and in writing

Plaintiffs' Exhibit

91

Page 2

Title: Assistant Facility Director

- Ability to react quickly and make rational decisions in emergency situations

Qualifications:

Graduation from a four-year college or university, with a Master's degree in one of the Social or Behavioral sciences, Business, Public Administration, Health services, Hospital Administration, or a related field.

Considerable (48 months) recent progressive experience in an administrative capacity in the field of mental health/mental retardation.

Other job related education and/or experience may be substituted for all or part of these basic requirements.

# Staff Development Specialist V

*Job Code: U7000*

*Pay Range: 80*

## **Definition:**

This is highly responsible administrative and professional work in training and directing the human resource development program for the department.

An employee in this class is responsible for planning, organizing, coordinating, and implementing, a comprehensive human resource development program. Work involves overseeing the selection of participants for training programs, scheduling programs, selecting and arranging training locations, and selecting speakers, materials and training aids. The employee provides frequent advice and recommendations to various high level officials of the Department on training needs, problems, and policies. Supervision is exercised over professional and non professional employees performing specialized assignments. Work is assigned with general instructions and objectives by an administrative supervisor who provides policy guidelines and who evaluates work for adherence to proposed goals and effectiveness of results.

## **Qualifications:**

Graduation from a four-year college or university, with a master's degree in the behavioral sciences, education, administration, including considerable (48 months or more) responsible administrative and supervisory experience in the mental health field.

Other job related education and/or experience may be substituted for all or part of these basic requirements.



# Director of Residential Services

Job Code: A3100

Pay Range: 80

## Definition:

This is advanced, professional, administrative work of extensive scope and complexity in the coordination of Residential Services at a state Mental Health facility.

The employee in this class is responsible for directing and coordinating residential care and recreational and support activities for clients according to individual habilitation treatment plan and compliance with federal, state, court, departmental, and facility standards. Supervision may be exercised over administrative and/or professional employees. General supervision is received from the facility director who may review work periodically through written or oral consultation. Employee may serve as a QMRP/QMHP as applicable.

## Examples of Work Performed: (May not include all duties performed)

- Develop goals and objectives for the Residential and Support Services Department based upon identified needs of the resident population.
- Supervise and evaluate staff by reviewing the performance of all directly supervised, completing evaluations, and initiating disciplinary action when necessary.
- Devise departmental policies and procedures in accordance with Title XIX court-ordered standards as well as facility policies and procedures.
- Meet with counsel and respond to family inquiries to inform them of the overall status and well being of clients.
- Read and review documents such as disciplinary reports, incident reports, individual treatment plans, work schedules, progress notes, or leave requests in order to implement a system of check and balances.
- Attend all executive and/or professional meetings as required to ensure information is appropriately disseminated among personnel.
- Determine training needs of departmental employees and coordinate efforts with direct care to provide optional care for facility's residents.
- Review, plan, and implement cost effective changes in the organizational structure to improve efficiency and responsiveness of the department.



12/94

ADMH 01-06-00098

Page 2

Title: Director of Residential Services

Knowledge, Skills, and Abilities:

- Ability to communicate effectively orally and in writing
- Ability to direct a residential services program at a facility serving MR clients
- Ability to effectively plan, organize, direct, and evaluate the activities of others
- Ability to make independent judgements, establishes priorities, and solves managerial problems.
- Knowledge of various disorders as they relate to mental retardation
- Knowledge of Title XIX, Wyatt court order, ICF, and JCAH regulations
- Knowledge of treatment strategies such as behavioral, group, individual, and family therapy
- Ability to make clinical assessments to include the ability to observe, interview, and interpret

Qualifications:

Graduation from a four-year college or university with a Master's degree in Psychology, Social Work, Special Education, or a related field. Considerable experience (48 months or more) in a mental health setting with progressively supervisory experience (24 months or more). Certifiable QMRP.

Other job related education and/or experience may be substituted for all or part of these basic requirements.

# Personnel Manager I

Job Code: H4000

Range: 75

## Definition:

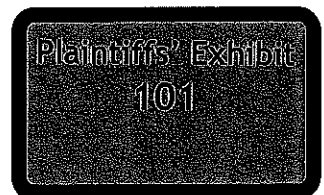
This is responsible professional personnel management work at a small facility for the Department of Mental Health Retardation. An employee in this class is responsible for planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program. Supervision may be exercised over professional and non-professional staff performing specialized assignments. Work is assigned with general instructions and objectives by an Administrative Supervisor or the Director who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results.

## Examples of Work Performed:

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action.
- Explains payroll deductions such as retirement benefits, credit union, fringe benefits, and other personnel matters in order to provide pertinent information to employees.
- Receives requests to fill vacancies within the Department of Mental Health and Mental Retardation.
- Advises facility director and makes recommendations to department heads, administrators, supervisors, and employees on rules, regulations, and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers, and dismissals.
- Supervises professional and non-professional staff and conducts performance evaluations.

## Knowledge, Skills, and Abilities:

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Thorough knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and State and Federal legislation.



Page 2

Title: Personnel Manager I

- Ability to plan, organize, direct, and evaluate the work of others.
- Ability to communicate effectively, both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.

**Qualifications:**

Graduation from a four-year college or university with a Bachelor's degree in Personnel Management, Business Administration, Public Administration, or related field. **Experience** (24 months or more) in professional personnel management.

Other directly related education and/or work experience may be substituted for all or part of these basic requirements.

9/06

ADMH 01-06-00122



# Personnel Manager II

Job Code: H5000

Range: 79

## Definition:

This is highly responsible professional personnel management work at a moderate-sized facility for the Department of Mental Health Retardation. An employee in this class is responsible for planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program. Supervision may be exercised over professional and non-professional staff performing specialized assignments. Work is assigned with general guidelines and objectives by an Administrative Supervisor or the Director who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results.

## Examples of Work Performed:

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, and affirmative action.
- Explains payroll deductions such as retirement benefits, credit union, fringe benefits, and other personnel matters in order to provide pertinent information to employees.
- Provides frequent advice and recommendations to the Director on personnel needs, rules, policies, and may participate in the management process of the facility.
- Supervises professional and non-professional staff and conducts performance evaluations.

## Knowledge, Skills, and Abilities:

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and State and Federal legislation.



ADMH 01-06-00123

Page 2

Title: Personnel Manager II

- Ability to communicate effectively, both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.
- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the public

**Qualifications:**

Graduation from a four-year college or university with a degree in Personnel Management, Business Administration, Public Administration, or related field. **Considerable experience** (48 months or more) in professional personnel management.

Other directly related education and/or work experience may be substituted for all or part of these basic requirements.

9/06

ADMH 01-06-00124

# Personnel Manager III

Job Code: H6000

Range: 82

## Definition:

This is highly responsible professional personnel management work in directing a large facility for the Department of Mental Health Retardation. An employee in this class is responsible for planning, organizing, developing, coordinating, and implementing a comprehensive personnel management program. Supervision is exercised over a professional and non-professional staff. Work is assigned with general instructions and objectives by an Administrative Supervisor who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results.

## Examples of Work Performed:

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, affirmative action, employee counseling, and payroll.
- Explains payroll deductions such as retirement benefits, credit union, fringe benefits, and other personnel matters in order to provide pertinent information to employees.
- Provides frequent advice and recommendations to the facility director, department heads, administrators, and supervisors on personnel needs, rules, policies, and may participate in the management process of a large facility.
- Supervises professional and non-professional staff and conducts performance evaluations.

## Knowledge, Skills, and Abilities:

- Thorough knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Thorough knowledge of classification, recruitment, selection, placement, employee training, and staff development.
- Knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and State and Federal legislation.



Page 2

Title: Personnel Manager III

- Ability to communicate effectively, both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.
- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the public

**Qualifications:**

Graduation from a four-year college or university with a Bachelor's degree in Personnel Management, Business Administration, Public Administration, or related field. **Extensive** (72 months or more) responsible experience in professional personnel management.

Other directly related education and/or work experience may be substituted for all or part of these basic requirements.

9/06

ADMH 01-06-00128

# Personnel Manager IV

Job Code: H7000

Range: 85

## Definition:

This is highly responsible professional personnel management of extensive scope and complexity. This position is located at the Central Office and is responsible for planning, organizing, developing, coordination, and implementing a comprehensive personnel management program not only affecting Central Office, but all facilities in the Department of Mental Health and Mental Retardation. Supervision is exercised over a professional and non-professional staff. Work is assigned with general instructions and objectives by an Associate Commissioner/Commissioner who provides policy guidelines and who evaluates work for adherence to program goals and effectiveness of results.

## Examples of Work Performed:

- Plans, organizes, develops, coordinates, and implements a comprehensive personnel management program.
- Coordinates efforts to include various personnel functions, such as recruitment, selection, job placement, position classification, employee training, performance appraisals, affirmative action, employee counseling, and payroll.
- Serves as a liaison between the Department and State Personnel Department in all transactions affecting employees. Makes investigations in regards to duties and responsibilities and their effect as applied to the assigned Department
- Represents the Department before the State Personnel Board; prepares and presents material to support classification and pay plan changes, exceptional pay increases for individual employees, and other proposed personnel actions
- Provides frequent advice and makes recommendations to facility director, department heads, administrators, and supervisors on personnel needs, rules, and policies
- Supervises professional and non-professional staff and conduct performance evaluations



Page 2

Title: Personnel Manager IV

Knowledge, Skills, and Abilities:

- Extensive knowledge of State Personnel Board rules, policies, and procedures
- Knowledge of the rules, regulations, procedures, organizations, and programs of the department concerned
- Knowledge of principles of public administration, including classification, recruitment, selection, placement, and employee training
- Knowledge of management principles and practices, and of the budgeting process
- Knowledge of interviewing and counseling techniques
- Knowledge of mathematics to include addition, subtraction, multiplication, division, percentages, and business statistics
- Ability to exercise independent judgment and discretion in developing, interpreting, and applying a variety of personnel policies and procedures
- Knowledge of Department of Mental Health and Mental Retardation rules and regulations.
- Knowledge of the principles and practices of public personnel administration, regarding applicable rules, regulations, policies, and State and Federal legislation.
- Ability to act as a mediator in resolving issues involving union negotiations
- Ability to communicate effectively, both orally and in writing.
- Ability to gather, correlate, and analyze facts, and recommend solutions.
- Ability to meet and work effectively with supervisors, associates, department employees, job applicants, administrative officials, and the public

Qualifications:

Graduation from a four-year college or university with a Master's degree in Personnel Management, Business Administration, Public Administration, or related field. Progressively extensive experience (72 months or more) in professional personnel management. Other job-related education and/or experience may be substituted for all or part of these basic requirements.

8/06



The Alabama Department of  
**Mental Health &  
Mental Retardation**



John Houston  
Commissioner

Commissioner's Office

Mental Illness

Mental Retardation

Substance Abuse

Administration

For  
Consumers

For Family  
Members

For  
Advocates

For Employment  
Opportunities

For  
Students

## Administration | About Our Employment Opportunities

Thank you for your interest in Alabama's Department of Mental Health and Mental Retardation. Great strides have been made in upgrading the quality of services to Alabama citizens with mental disabilities. We are proud of our department and what it has to offer prospective employees. Competitive salaries, excellent fringe benefits, fair employment practices, and opportunities for continuing your career growth are just a few of the advantages of working in our system.

Our department offers a broad range of professional positions which are not classified under the state merit system. These nonmerit, or exempt, positions were established to expedite the hiring process and, thereby, improve service delivery in the areas of mental illness, mental retardation, and substance abuse. The positions provide applicants with numerous opportunities for professional growth while enjoying the benefits of state employment.

A list of vacancies for exempt positions in our central administrative office and mental illness and mental retardation facilities throughout the state is available for viewing on this web site.

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Plaintiffs' Exhibit  
105



**DEPOSITION OF JOAN OWENS**

**June 2, 2008**

**Pages 1 through 261**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

**Plaintiffs'  
Exhibit 106**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and  
KAREN LYNN HUBBARD,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
2:07-CV-650

STATE OF ALABAMA DEPT. OF  
MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF JOAN OWENS, taken pursuant to  
stipulation and agreement before Lisa J. Green, CCR,  
ACCR # 334, Registered Professional Reporter and  
Commissioner for the State of Alabama at Large, in the  
Law Offices of Melton, Espy & Williams, 255 Dexter  
Avenue, Montgomery, Alabama on Monday, June 2, 2008,  
commencing at approximately 9:40 a.m.

\* \* \* \* \*

Deposition of Joan Owens

June 2, 2008

Page 2

## APPEARANCES

## FOR THE PLAINTIFF:

Mr. J. Flynn Mozingo  
MELTON, ESPY & WILLIAMS  
Attorneys at Law  
255 Dexter Avenue  
Montgomery, Alabama

## FOR THE DEFENDANT:

Mr. H. E. Nix, Jr.  
NIX, HOLTSFORD, GILLILAND,  
HIGGINS & HITSON

Attorneys at Law  
Suite 300  
4001 Carmichael Road  
Montgomery, AL 36106

Mr. Courtney W. Tarver  
Deputy Attorney General and  
General Counsel  
Bureau of Legal Services  
ADMH/MR  
RSA Union Building  
100 North Union Street  
Montgomery, Alabama

## ALSO PRESENT:

Ms. Lynn Hubbard  
Ms. Marilyn Benson  
Mr. Henry Ervin

Page 4

## STIPULATION

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of JOAN OWENS is taken pursuant to the Federal Rules of Civil Procedure and that said deposition may be taken before Lisa J. Green, Registered Professional Reporter and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in evidence or used for any other purpose by either party provided for by the Statute.

It is further stipulated and agreed by and between counsel representing the parties in this case that the filing of said deposition is hereby waived and may be introduced at the trial of this case or used in any other manner by either party hereto provided for by the Statute regardless of the waiving of the filing of the same.

It is further stipulated and agreed by and between the parties hereto and the witness that the

Page 3

## EXAMINATION INDEX

## JOAN OWENS

BY MR. NIX ..... 5  
BY MR. MOZINGO ..... 256  
BY MR. NIX ..... 258

## DEFENDANT'S EXHIBIT INDEX

1	Internet Use Policy	8
2	Departmental Assistant Personnel Manager announcements	100
3	6/16/06 Proposal to Conduct a Wage and Classification Study	115
4	11/30/07 Job Classification Structure - Final Report	117
5	6/30/05 Exempt Selection Procedure	178
6	EEOC Charge filed by Joan Owens	210
7	7/10/06 letter to Joan Owens from Lula Bell	213
8	Undated letter to Emanuel Smith, Esquire from Joan Owens	215
9	Undated letter to Bernice Williams-Kimbrough from Joan Owens	217
10	Attachment to Joan Owens' submission for reconsideration	219
11	Notice of Intent to Reconsider for Joan Owens	220
12	Dismissal and Notice of Rights for Joan Owens	227
13	Announcement Log for 2005	229

Page 5

signature of the witness to this deposition is hereby waived.

\*\*\*\*\*

## JOAN OWENS

The witness, after having first been duly affirmed to speak the truth, the whole truth and nothing but the truth testified as follows:

## EXAMINATION

BY MR. NIX:

Q. Would you state your name for the record, please.

A. Joan Faulk Owens.

Q. What is your birthday, Ms. Owens?

A. January the 18th, 1947.

Q. What is your job?

A. Personnel Specialist III.

Q. And where do you work?

A. Department of Mental Health, State of Alabama.

Q. In what department?

A. Personnel, Human Resources.

Q. How long have you worked in the Personnel or

Deposition of Joan Owens

June 2, 2008

Page 6	Page 8
<p>1 Human Resources Department at Mental Health</p> <p>2 Central Office?</p> <p>3 MR. MOZINGO: Just the Central</p> <p>4 Office?</p> <p>5 MR. NIX: Yeah.</p> <p>6 Q. Well, now, I know that you've been back and</p> <p>7 forth to some places; isn't that right?</p> <p>8 A. Yes, sir. I began my work at Central Office</p> <p>9 in 1999, and this is 2008.</p>	<p>1 that time you did, you ask the witness whether</p> <p>2 at the conclusion of this deposition after our</p> <p>3 court reporter, Ms. Green, types it up and has</p> <p>4 it finished and everything, whether you want</p> <p>5 to read it and sign it after making certain</p> <p>6 clerical corrections if there are any clerical</p> <p>7 corrections to be made, or you may waive the</p> <p>8 right to do that. And if you waive the right,</p> <p>9 then the deposition will simply be used as is</p>
<p>10 Q. Before that, you were at a couple of</p> <p>11 facilities doing personnel?</p> <p>12 A. Before that, I was Personnel Director at Greil</p> <p>13 Hospital for six months, and before that I was</p> <p>14 Personnel Specialist at J. S. Tarwater in</p> <p>15 Wetumpka for eight, nine years.</p> <p>16 Q. And you are the Joan Faulk Owens that is a</p> <p>17 plaintiff -- one of the plaintiffs in Owens</p> <p>18 and Hubbard versus the Alabama Department of</p> <p>19 Mental Health and Mental Retardation and four</p> <p>20 individuals, Commissioner John Houston,</p> <p>21 Mr. Henry Ervin, Mr. Otha Dillihay, and</p> <p>22 Ms. Marilyn Benson?</p> <p>23 A. Yes, I am.</p>	<p>10 without your reviewing it.</p> <p>11 MR. MOZINGO: Waive it.</p> <p>12 A. Waive.</p> <p>13 Q. Okay. You waive that. Thank you very much.</p> <p>14 (Defendant's Exhibit 1 was marked for</p> <p>15 identification.)</p> <p>16 Q. Let me show you Defendant's Exhibit Number 1,</p> <p>17 please, ma'am. I'll just ask you to tell me</p> <p>18 what that is for the record.</p> <p>19 A. That is saying that I will only use the</p> <p>20 Internet on my computer at work for business</p> <p>21 purposes.</p> <p>22 Q. Okay. And is that your signature down there?</p> <p>23 A. Yes, it is.</p>
Page 7	Page 9
<p>1 Q. And that's the case we're here about today.</p> <p>2 And I want to ask you some questions,</p> <p>3 Ms. Owens, about the case. Okay?</p> <p>4 A. Yes, sir.</p> <p>5 Q. If you don't understand anything that I ask</p> <p>6 you, please just let me know, ask me to</p> <p>7 rephrase it or whatever. I'll be glad to.</p> <p>8 A. Yes, sir.</p> <p>9 Q. No reason for you to have to try to answer a</p> <p>10 question you do not understand. I don't want</p> <p>11 you to do that, so please tell me if you don't</p> <p>12 understand it.</p> <p>13 A. Yes, sir.</p> <p>14 Q. If I can explain a question better, I'll try</p> <p>15 to do that. I just want us to have a meeting</p> <p>16 of the minds about what we're talking about.</p> <p>17 Okay?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Now, this is a deposition that's taken</p> <p>20 pursuant to the Federal Rules of Civil</p> <p>21 Procedure. Back in the Middle Ages when I</p> <p>22 practiced -- first started practicing law, I</p> <p>23 learned that you have to ask -- or at least at</p>	<p>1 Q. What is the date of that signature?</p> <p>2 A. January 27th, 2000.</p> <p>3 MR. MOZINGO: Let me make this</p> <p>4 statement for the record.</p> <p>5 Obviously no objection regarding</p> <p>6 the exhibit, but Exhibit 1</p> <p>7 speaks for herself, so -- I</p> <p>8 mean, it speaks for itself.</p> <p>9 So to the extent her</p> <p>10 testimony may be adding to</p> <p>11 Exhibit 1, it does speak for</p> <p>12 itself and she was simply</p> <p>13 paraphrasing.</p> <p>14 MR. NIX: I was just asking her</p> <p>15 understanding, but that's fine.</p> <p>16 Q. Let me just read a few parts of this for you.</p> <p>17 Okay? It says something about a policy,</p> <p>18 Policy 40-10, Internet Use. Have you read</p> <p>19 that policy, the policy that relates to</p> <p>20 Internet use? Do you recall?</p> <p>21 A. I'm sure I have at some point in time.</p> <p>22 Q. Okay. It says: I understand that I am</p> <p>23 required to accept responsibility for use of</p>

Deposition of Joan Owens

June 2, 2008

Page 10	Page 12
<p>1 DMH/MR computer hardware, software, and</p> <p>2 Internet services in accord with applicable</p> <p>3 federal and state laws and DMH/MR policy.</p> <p>4 I further understand that: A, all</p> <p>5 network activity conducted with State</p> <p>6 resources is the property of the State of</p> <p>7 Alabama.</p> <p>8 Do you have an understanding of what that</p> <p>9 means?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What do you think that means there?</p> <p>12 A. That my computer belongs to the State of</p> <p>13 Alabama and that I use it for business</p> <p>14 purposes.</p> <p>15 Q. Okay. And that it's the property of the State</p> <p>16 of Alabama once you use the information that</p> <p>17 you input or generate or use?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And then B: The State reserves the right to</p> <p>20 monitor and log network activity, including</p> <p>21 e-mail, with or without notice to you. Is</p> <p>22 that --</p> <p>23 A. Yes, sir.</p>	<p>1 morning first is, what do you hope to gain in</p> <p>2 this lawsuit?</p> <p>3 A. Well, I would like to see Marilyn taken out of</p> <p>4 the position and it opened back up and me be</p> <p>5 permitted to interview for the position.</p> <p>6 Q. I wrote that down that you would like to see</p> <p>7 Marilyn taken out of the position and it</p> <p>8 opened back up. In terms of what? The</p> <p>9 application process?</p> <p>10 A. The announcement.</p> <p>11 Q. The announcement. And then you would like to</p> <p>12 be interviewed as an applicant for that</p> <p>13 position?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. What else would you like to gain from</p> <p>16 this lawsuit?</p> <p>17 A. That would be it right there. I would -- That</p> <p>18 was what I wanted from the very beginning --</p> <p>19 Q. Okay.</p> <p>20 A. -- is to be able to compete. I was denied the</p> <p>21 opportunity to compete for that job.</p> <p>22 Q. Okay. How were you denied the opportunity to</p> <p>23 compete?</p>
Page 11	Page 13
<p>1 Q. And C: There is no right of personal privacy</p> <p>2 that attaches to the use of these resources,</p> <p>3 correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And you understood those things when you</p> <p>6 signed this document?</p> <p>7 A. Yes, sir.</p> <p>8 MR. NIX: I would offer Exhibit</p> <p>9 Number 1 to the deposition.</p> <p>10 Q. Now, Ms. Owens, this lawsuit that you have</p> <p>11 filed that we're here about today has a number</p> <p>12 of different counts in it, and I don't</p> <p>13 necessarily expect for you to know the legal</p> <p>14 definition of the counts or anything like</p> <p>15 that. Okay? I'm not expecting you to. You</p> <p>16 may or you may not. That's fine.</p> <p>17 You have filed this suit separately with</p> <p>18 another individual -- if I understand</p> <p>19 correctly, you have filed this suit separately</p> <p>20 with another individual separately whose name</p> <p>21 is Hubbard; is that right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. What I would like to ask you this</p>	<p>1 A. The clause was left out of the announcement</p> <p>2 which excluded myself from being able to apply</p> <p>3 for it.</p> <p>4 Q. And you're talking about the substitution</p> <p>5 clause?</p> <p>6 A. Yes, sir.</p> <p>7 Q. All right. So the substitution clause was</p> <p>8 left out of the announcement?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Was it left out of the specification that was</p> <p>11 drafted for that position?</p> <p>12 A. It was left out of the qualifications, minimum</p> <p>13 qualifications, yes, sir.</p> <p>14 Q. Doesn't the specification contain as part of</p> <p>15 it the minimum qualifications?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And the announcement follows the spec,</p> <p>18 isn't that correct, in terms of describing the</p> <p>19 job?</p> <p>20 A. Yes, sir. You take the specifications to make</p> <p>21 the announcement.</p> <p>22 Q. Why is that a bad thing for the substitution</p> <p>23 clause to be left out of the spec?</p>

Deposition of Joan Owens

June 2, 2008

Page 14	Page 16
<p>1 A. It excluded me from being able to apply for</p> <p>2 the job.</p> <p>3 Q. All right. What is the substitution clause,</p> <p>4 then?</p> <p>5 A. The substitution clause would have let me</p> <p>6 substitute experience for education to</p> <p>7 qualify.</p> <p>8 Q. Okay. So what was it about the announcement</p> <p>9 and the listing of qualifications that you</p> <p>10 would have needed the qualification clause to</p> <p>11 overcome?</p> <p>12 A. The education, a four-year degree.</p> <p>13 Q. Okay. Was there anything else about the</p> <p>14 announcement that deprived you of the</p> <p>15 opportunity to compete for the job?</p> <p>16 A. No.</p> <p>17 Q. Only the absence of the substitution</p> <p>18 provision?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Now, there must be some reason that you're</p> <p>21 suing because the substitution clause was not</p> <p>22 present in that announcement. What is the</p> <p>23 reason for that?</p>	<p>1 hard time with.</p> <p>2 And apparently you felt that way. You</p> <p>3 felt like you had been wronged in some way.</p> <p>4 I'm just trying to understand what your</p> <p>5 thinking was about that and what your belief</p> <p>6 was about that, how you were wronged and why.</p> <p>7 MR. MOZINGO: Are you asking her why</p> <p>8 she thinks she's been wronged?</p> <p>9 Is that your question?</p> <p>10 MR. NIX: How for one thing. We</p> <p>11 know that the substitution</p> <p>12 clause was left out. We know</p> <p>13 that the educational requirement</p> <p>14 was there. She did not meet the</p> <p>15 education requirement.</p> <p>16 But what is it about those</p> <p>17 two things, the substitution</p> <p>18 clause being out of it and the</p> <p>19 educational clause being there,</p> <p>20 that gives her some type of</p> <p>21 reason to complain? How about</p> <p>22 that? Is that a better way to</p> <p>23 say it?</p>
Page 15	Page 17
<p>1 I know it stopped you from competing, you</p> <p>2 say, because you did not have the educational</p> <p>3 requirement that was there and it did not</p> <p>4 allow you to substitute your experience for</p> <p>5 the education requirements. I understand that</p> <p>6 part. But what is it about that that gives</p> <p>7 you a grievance?</p> <p>8 MR. MOZINGO: I object to the form.</p> <p>9 I'm not really totally sure I</p> <p>10 understand the question;</p> <p>11 therefore, I wouldn't think she</p> <p>12 would totally understand it</p> <p>13 either. Can you rephrase it in</p> <p>14 a different way.</p> <p>15 Q. I guess I don't understand why leaving the</p> <p>16 substitution clause -- or leaving a</p> <p>17 substitution clause out of the qualifications</p> <p>18 portion of the specification -- or</p> <p>19 announcement and requiring education up to a</p> <p>20 certain level with no substitution would make</p> <p>21 someone think that they had a legal cause of</p> <p>22 action or that they could sue somebody because</p> <p>23 of that. I guess that's what I'm having a</p>	<p>1 MR. MOZINGO: It wouldn't be the way</p> <p>2 I would ask it. But, sure, if</p> <p>3 you understand --</p> <p>4 Q. I'm just trying to ask you what your reasoning</p> <p>5 was, your rationale was.</p> <p>6 A. It locked me into the position that I'm in</p> <p>7 now. I cannot go any further up. It is the</p> <p>8 only Personnel job in my department that the</p> <p>9 clause is left out of. At this point in time,</p> <p>10 I could apply for Henry's job because the</p> <p>11 clause is in his specs. I can apply for any</p> <p>12 personnel director's job with the Department</p> <p>13 because the clause is in those specs.</p> <p>14 But what you're telling me, by leaving it</p> <p>15 out, I can't even be his assistant, but I can</p> <p>16 be him. I could hold his job, but I can't</p> <p>17 even be his assistant, so it's going to lock</p> <p>18 me into a Personnel Specialist III job.</p> <p>19 Q. I'm not telling you anything. I'm just asking</p> <p>20 questions. But you're saying that the way you</p> <p>21 see it is that it locks you into the position</p> <p>22 you're in now or it locks you into any</p> <p>23 advancement to a different or higher position</p>



Page 18	Page 20
<p>1 except with respect to the position that Henry</p> <p>2 Ervin currently holds. Is that what you're</p> <p>3 saying?</p> <p>4 A. Yes, or a personnel director's job in a</p> <p>5 facility. That is the only job that --</p> <p>6 Q. You could have a personnel job --</p> <p>7 A. -- that the clause is left out.</p> <p>8 MR. MOZINGO: Don't talk while he's</p> <p>9 asking a question.</p> <p>10 (Brief interruption.)</p> <p>11 Q. I want to go back to that in just a minute.</p> <p>12 Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Now, in your complaint -- is this the only --</p> <p>15 this is the only thing you are seeking from</p> <p>16 this lawsuit; is that correct?</p> <p>17 MR. MOZINGO: Well, the complaint</p> <p>18 speaks for itself.</p> <p>19 MR. NIX: The complaint speaks, but</p> <p>20 she speaks for herself.</p> <p>21 Q. I want to ask you the questions. I know what</p> <p>22 the complaint says, but I want to know whether</p> <p>23 there is anything else besides taking Marilyn</p>	<p>1 position and reopening the job application</p> <p>2 process and all the other stuff related to it</p> <p>3 would be what I call equitable relief.</p> <p>4 A. Yes, sir.</p> <p>5 Q. Huh?</p> <p>6 A. Yes, I think it would be equitable, too.</p> <p>7 Q. And that's what the court calls it. It's</p> <p>8 equitable relief or injunctive relief. It's</p> <p>9 relief the court orders by way of specific</p> <p>10 action. Okay?</p> <p>11 Do you claim any damages in this case?</p> <p>12 A. I'm claiming damages.</p> <p>13 Q. Okay. Can you tell me about those?</p> <p>14 A. Now, sir, I don't know. My attorney would</p> <p>15 have to talk with you about what my claims</p> <p>16 are.</p> <p>17 Q. You don't know your damages, don't know what</p> <p>18 your damages are?</p> <p>19 MR. MOZINGO: He's asking the things</p> <p>20 that's happened to you, why</p> <p>21 you're claiming monetary damages</p> <p>22 is what he's asking. Why are</p> <p>23 you claiming those?</p>
Page 19	Page 21
<p>1 out of her current position, re-announcing the</p> <p>2 job using the substitution provision in it,</p> <p>3 allowing you to apply, allowing you to be</p> <p>4 interviewed if you pass the process for that</p> <p>5 purpose and compete for that job of</p> <p>6 Departmental Assistant Personnel Manager,</p> <p>7 right?</p> <p>8 A. I feel that I can get that job. I feel that I</p> <p>9 could have gotten that job if I had been</p> <p>10 allowed to apply for it. If I had not been</p> <p>11 denied the right to apply for that job, I</p> <p>12 fully feel in my heart that I could have</p> <p>13 gotten it.</p> <p>14 Q. Why?</p> <p>15 A. Because I had the experience and I've worked</p> <p>16 in personnel for so many years. I believe I</p> <p>17 could have gotten the job through an</p> <p>18 interview.</p> <p>19 Q. Okay. Are you asking for any other kinds of</p> <p>20 damages or any other kinds of relief which is</p> <p>21 what I call --</p> <p>22 What you've already told me about, that</p> <p>23 would be removing Ms. Benson from her current</p>	<p>1 A. One of the reasons why is because it has -- I</p> <p>2 have had medical problems since then. I have</p> <p>3 been embarrassed to the fact that I've had</p> <p>4 people walk into my office and say, well,</p> <p>5 Joan, why didn't you get that job, why didn't</p> <p>6 you apply for that job? And then I have to go</p> <p>7 into the fact that I don't have the education</p> <p>8 to do that or that I was not felt to be the</p> <p>9 right person for it evidently.</p> <p>10 I don't sleep at night. I've worked in</p> <p>11 HR many years, and to feel that I'm not</p> <p>12 capable of doing that job ...</p> <p>13 Q. So would you put that under the category of</p> <p>14 embarrassment or humiliation?</p> <p>15 A. Yes, I would.</p> <p>16 Q. What other kinds of damages --</p> <p>17 A. I've developed high blood pressure. I've</p> <p>18 always been very healthy, and now this has</p> <p>19 happened.</p> <p>20 Q. When you say this happened, when did this</p> <p>21 happen?</p> <p>22 A. The job was announced September the 15th of</p> <p>23 2005.</p>



Page 22	Page 24
<p>1 Q. Is that in your mind when this, quote, 2 happened? 3 A. I really didn't believe that they would do 4 this. I kept thinking that they wouldn't do 5 it until they -- we had a staff meeting and it 6 was announced that Marilyn received the job. 7 And I think she went into it -- Henry 8 told us on March the 3rd, I think it was, and 9 she went into it on March the 4th. And I 10 think that's really when it hit home and made 11 me start feeling the way I felt. 12 MR. NIX: We can take a break 13 anytime you wish, Ms. Owens. 14 Why don't we take a break. 15 THE WITNESS: No. 16 MR. MOZINGO: Let's take a break. 17 MR. NIX: Let's do. Let's take a 18 break. 19 (Brief recess was taken.) 20 MR. MOZINGO: For the record, I want 21 it to be noted that the 22 plaintiffs supplemented their 23 discovery responses -- excuse</p>	<p>1 Taylor, advising Joan Owens that 2 she will be in charge during his 3 absence. 4 So those are being 5 supplemented to their discovery 6 responses, and I think you 7 already have a copy, Chip, 8 right? 9 MR. NIX: Yeah, right there. 10 Q. We were talking about your damages, Ms. Owens. 11 A. Yes. 12 Q. You mentioned the date of September 15, 2005, 13 which you say is the date of the announcement 14 for this job which I call the Departmental 15 Assistant -- wait a minute, Departmental 16 Assistant Personnel Manager; isn't that right? 17 A. Yes, sir. 18 Q. Okay. Good. And that was 9-15-05, 19 Departmental Assistant Personnel Manager, 20 right? 21 A. Yes, sir. 22 Q. Now, when did you first know about this 23 announcement or that there was an announcement</p>
Page 23	Page 25
<p>1 me, are supplementing their 2 discovery responses today. 3 In particular, we are 4 producing three documents to 5 supplement our production 6 already, and the three documents 7 are a memorandum from Marilyn 8 Benson to Joan Owens dated 9 Monday, May 7, 2005, at 10 5:03 p.m. It's a memo 11 referencing Ms. Owens being in 12 charge while Mr. Ervin and 13 Ms. Benson are out of the 14 office; 15 Another memorandum to Lynn 16 Hubbard dated November 9th, 17 2007, from Henry Ervin regarding 18 supervisory change for Personnel 19 Specialist III position; 20 And then a third memorandum 21 dated Thursday, December 28, 22 2006, 9:39 a.m. from Henry Ervin 23 through his secretary, Rebecca</p>	<p>1 or a specification or a job title that was 2 like this or a job of this type that might 3 become available? 4 A. I couldn't tell you a date. It was sometime 5 before that. I don't know the date that I 6 found out that the job was going to be 7 announced. 8 Q. How did you find out? 9 A. We were in a staff meeting in Henry's office, 10 and Lynn had gotten a call from State 11 Personnel asking about something to do with 12 setting the position up, and she questioned 13 Henry about it. 14 Q. Okay. This was in a staff meeting in Henry's 15 office? 16 A. Yes, it was. 17 Q. Did you say Lynn; is that right? 18 A. Lynn. 19 Q. Karen Lynn -- 20 MS. HUBBARD: (Nods head up and 21 down.) 22 Q. Is that it, Lynn Hubbard? 23 A. Lynn.</p>

Deposition of Joan Owens

June 2, 2008

Page 26	Page 28
<p>1 Q. And Ms. Hubbard asked Mr. Ervin?</p> <p>2 A. About it.</p> <p>3 Q. Can you tell me what transpired, what the</p> <p>4 discussion was and all that?</p> <p>5 A. No, sir. All I know is that she asked him</p> <p>6 about it. And I didn't know that it was even</p> <p>7 being created or done at that point in time.</p> <p>8 I don't know when the meeting was, and I don't</p> <p>9 know -- if I tried to tell you exactly what</p> <p>10 was said, I couldn't do that. I just know ...</p> <p>11 Q. This was after Ms. Hubbard had received a</p> <p>12 telephone call from State Personnel?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Now, earlier, before you mentioned this</p> <p>15 September 15, 2005, date, I think you said</p> <p>16 something to the effect of I did not think</p> <p>17 they would go through with it or I did not</p> <p>18 think they would actually do it or something</p> <p>19 to that effect.</p> <p>20 A. Yes, sir.</p> <p>21 Q. Meaning the lack of the substitution</p> <p>22 provision, I think; is that what you meant?</p> <p>23 A. I really thought that they would put the</p>	<p>1 before, but I thought you said I didn't think</p> <p>2 they would go through with it or I thought</p> <p>3 that they would --</p> <p>4 A. That's what I said. My gist is this, is I</p> <p>5 thought that by them leaving it out -- I</p> <p>6 called it to their attention.</p> <p>7 Q. Who? You called it to whose attention?</p> <p>8 A. I called it to June Lynn's attention and Henry</p> <p>9 Ervin's attention.</p> <p>10 Q. When was this, now?</p> <p>11 A. Shortly after the announcement came out,</p> <p>12 shortly after 9-15. Probably the day of it.</p> <p>13 I don't -- I could not swear -- I'm not</p> <p>14 swearing to that.</p> <p>15 Q. Did you talk to anybody else about the lack of</p> <p>16 a substitution clause in the announcement or</p> <p>17 in the specification prior to November --</p> <p>18 excuse me, prior to September 15th, 2005?</p> <p>19 A. No, because I didn't know it was going to be</p> <p>20 left out.</p> <p>21 Q. Okay. So you're saying -- what you're saying</p> <p>22 is -- okay. What you're saying is, you just</p> <p>23 thought they would put it in and would not go</p>
Page 27	Page 29
<p>1 clause in.</p> <p>2 Q. When you say you really thought that they</p> <p>3 would put the clause in, what do you mean?</p> <p>4 A. Well, by leaving that clause out of that</p> <p>5 announcement, it was clearly discrimination</p> <p>6 against me.</p> <p>7 Q. Okay.</p> <p>8 A. I was being discriminated against because of</p> <p>9 the color of my skin at that point in time.</p> <p>10 Q. I hear what you're saying. When did you</p> <p>11 begin -- apparently you had a question in your</p> <p>12 mind, right, about whether they would put the</p> <p>13 substitution clause in?</p> <p>14 A. I thought -- I really thought they would put</p> <p>15 it in.</p> <p>16 Q. What made you think they might not?</p> <p>17 A. I said I thought that they would. It wasn't</p> <p>18 that I didn't think that they wouldn't. I</p> <p>19 thought that they would. At that point, I</p> <p>20 thought they would because it was clearly</p> <p>21 eliminating myself from the application</p> <p>22 process.</p> <p>23 Q. Okay. Well, I may have misunderstood you</p>	<p>1 through with not putting it in. And what was</p> <p>2 your reason again for that?</p> <p>3 A. It was very obvious, sir, that by not putting</p> <p>4 the substitution clause in that they did not</p> <p>5 want a white person in the job.</p> <p>6 Q. I guess this is what I'm confused about. What</p> <p>7 I'm confused about is the first time you gave</p> <p>8 the response concerning this September 15th,</p> <p>9 '05 date, it sounded the way you answered it</p> <p>10 like you had thought about the possibility</p> <p>11 that they were not going to have the</p> <p>12 substitution clause in the announcement or in</p> <p>13 that spec for the Departmental Assistant</p> <p>14 Personnel Manager, and I was wondering why you</p> <p>15 thought that, if you thought that was a</p> <p>16 possibility.</p> <p>17 MR. MOZINGO: I'm going to object to</p> <p>18 the form. I think she's</p> <p>19 testified that she thought they</p> <p>20 would put it back in.</p> <p>21 MR. NIX: She did, but what I'm</p> <p>22 asking, though --</p> <p>23 MR. MOZINGO: You're asking her the</p>

Deposition of Joan Owens

June 2, 2008

Page 30

1 flip side of that?

2 MR. NLX: No. I'm trying to explain  
3 to her my -- what I heard and  
4 what I thought when I heard you  
5 say it.

6 Q. I may have heard it wrong. I may have heard  
7 it completely backward, incorrectly, or  
8 whatever. But what I heard was, I thought  
9 they would go -- I didn't think they would go  
10 through with it and, you know, I thought they  
11 would put the substitution clause in, but on  
12 9-15 I knew they didn't.

13 But it sounded to me as though when you  
14 said I thought they would not go through with  
15 it -- that is, leaving out the substitution  
16 clause is the way I interpreted that. See?  
17 Do you see what I mean?

18 A. Mr. Nix, the first I knew that the clause had  
19 been left out of the announcement was when I  
20 saw it the first time, which was on 9-15.

21 Q. Right.

22 A. I read it, and I held it up as soon as I read  
23 it and I said, I'm going to apply for this. I

Page 31

1 didn't even notice that the clause had been  
2 left out at that point in time, so I did not  
3 know that it had been left out before 9-15.

4 Q. So what you're saying is, it never occurred to  
5 you that -- knowing that they were going to  
6 announce this job at some point in time, it  
7 never occurred to you that they might leave  
8 out the substitution clause?

9 A. No, it did not. It definitely did not occur  
10 to me that they would leave it out.

11 Q. That's what I wanted to know.

12 A. Yes, sir.

13 Q. That's what I was trying to clear up.

14 A. Yes, sir.

15 Q. In this meeting where Ms. Hubbard raised the  
16 job with Henry, can you remember at all what  
17 was said at that time, the staff meeting after  
18 Ms. Hubbard had received the telephone call  
19 from Personnel?

20 A. I don't remember what was said, but the  
21 specifications were not discussed at that  
22 time. What was discussed was that they were  
23 going to hire somebody in that position.

Page 32

1 That's the first I knew about that position.

2 Q. Why did Ms. Hubbard ask about it? Do you  
3 know? Or what was the question Ms. Hubbard  
4 asked? That's a better question. What was  
5 the question Ms. Hubbard asked Henry about at  
6 that meeting?

7 A. Sir, I don't know what the question was. I  
8 don't remember. I truly don't remember.

9 Q. Okay. Are any notes kept of those staff  
10 meetings?

11 A. Not that I know of.

12 Q. You don't keep any notes of them?

13 A. No, sir.

14 Q. You don't know of anyone else that keeps notes  
15 of them?

16 A. No, sir.

17 Q. Now, we were talking about money damages.  
18 Okay? Damages or -- money damages. Okay?

19 A. Yes, sir.

20 Q. And so what I want to know is, what money  
21 damages do you claim in this case?

22 A. Well, if I had gotten this job, it would have  
23 helped my retirement, because I'm an older

Page 33

1 lady, and being able to be put in a higher pay  
2 range would have helped my retirement  
3 tremendously.

4 If I had gone in that job in 2006, I  
5 would almost have three years at a higher  
6 paying salary, which the last three years of  
7 State retirement is very important, and it  
8 would have made my retirement a lot better.

9 Q. Why is the last three years real important?

10 A. Sir, I don't know.

11 Q. It just is? Somehow, it just is?

12 A. They take it, I believe, and average it out.

13 The three years you make the most money is  
14 what they base your retirement on.

15 Q. Okay. So what you're saying is, you're  
16 claiming money for loss of retirement benefits  
17 that you would have had and for loss of income  
18 you would have received --

19 A. Yes, sir.

20 Q. -- from the job --

21 A. Yes, sir.

22 Q. -- of Departmental Assistant Personnel  
23 Manager, right?

Deposition of Joan Owens

June 2, 2008

Page 34

1 A. Yes, sir.  
 2 Q. I have to say it a lot. I'll tell you that.  
 3 I can't remember the name of it. I don't know  
 4 why.  
 5 All right. So this is damages here. And  
 6 that would be damages in the form, I guess, of  
 7 lost income, would that be correct, and then  
 8 lost retirement benefits?  
 9 A. Yes, sir.  
 10 Q. Have you performed any calculation or come up  
 11 with any number as to how much money we're  
 12 talking about there?  
 13 A. Well, yes, I have. And I think that it's over  
 14 \$20,000 in retirement, and I think it's close  
 15 to \$8,000 in back pay. But I can't do it  
 16 specifically because we've had COLA raises and  
 17 all sorts of things. I'm just guessing, so  
 18 please remember that's a guess.  
 19 Q. You've done your best to come up with a number  
 20 is what you're telling me, I think.  
 21 A. Yes, sir, I have.  
 22 Q. So a little over -- or over \$20,000 in  
 23 retirement benefits if you had gotten the job

Page 35

1 at that time, and a little over \$8,000 in back  
 2 pay if you had gotten the job at that time; is  
 3 that correct?  
 4 A. Yes, sir.  
 5 Q. Do you remember what you were making at the  
 6 time this job was awarded to Ms. Benson?  
 7 A. No, sir, I don't.  
 8 Q. What is your salary now?  
 9 A. Between 2500 and \$2600 semi-monthly, and I  
 10 can't tell you the exact figure.  
 11 MR. MOZINGO: Is that gross or net?  
 12 THE WITNESS: That's gross.  
 13 Q. 26 to 2500 semi-monthly gross.  
 14 And then how is your retirement account  
 15 affected? I don't even know how the State  
 16 Retirement System runs.  
 17 A. Five percent of your salary comes out and  
 18 goes --  
 19 Q. Comes out of your salary?  
 20 A. Yes, sir, and then they match it once you  
 21 become vested at ten years.  
 22 Q. Okay. So five percent salary plus five  
 23 percent match from the Retirement System; is

Page 36

1 that right?  
 2 A. Yes, sir.  
 3 Q. And then when you retire, you're saying that  
 4 they base your benefits on your last --  
 5 A. Three highest years, which that would be your  
 6 three highest years.  
 7 Q. Your three highest years of pay?  
 8 A. Yes, sir.  
 9 Q. Does it affect -- would it have affected -- If  
 10 you had gotten this job, would it have  
 11 affected any other benefits that you're aware  
 12 of?  
 13 A. Social security.  
 14 Q. How would it have affected that?  
 15 A. The more you pay in, the more you draw when  
 16 you retire.  
 17 Q. Have you calculated that?  
 18 A. No, sir.  
 19 Q. Any other benefits that it would have  
 20 affected?  
 21 A. No, sir, none that I can think of at this  
 22 time.  
 23 Q. Do you know what the pay would have been?

Page 37

1 When Ms. Benson got this job, do you know what  
 2 her pay was or what it would have been?  
 3 A. No, sir.  
 4 Q. Therefore, you don't know -- you sort of know  
 5 your figures in terms of salary and all that,  
 6 but you don't know Ms. Benson's numbers in  
 7 terms of salary and those types of things  
 8 as -- in her position as Departmental  
 9 Assistant Personnel Manager; is that right?  
 10 A. Sir, working in Personnel, I can look on the  
 11 computer and see anyone's salary, so I can see  
 12 her salary. But as far as keeping her salary  
 13 in my brain, I can't do that.  
 14 Q. Have you looked at her salary?  
 15 A. Yes, I have.  
 16 Q. I mean, what have you seen? What do you  
 17 remember that you've seen?  
 18 A. All I know is that she makes more money than I  
 19 do. I don't just look at her salary and  
 20 remember what it was. I mean, like I say,  
 21 anybody that works in Mental Health, I can  
 22 look at their salary on the computer on the  
 23 GHRS system.



Page 38	Page 40
<p>1 Q. The GHRS --</p> <p>2 A. Government Human Resources.</p> <p>3 Q. System?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So you can pull that up on some kind of screen</p> <p>6 or other --</p> <p>7 A. Yes, sir.</p> <p>8 Q. How many times have you done that? Do you</p> <p>9 know?</p> <p>10 A. No, sir.</p> <p>11 Q. I'm sorry?</p> <p>12 A. No, sir, I don't know how many times.</p> <p>13 Q. Have you looked at Ms. Benson's salary on that</p> <p>14 system more than once --</p> <p>15 A. Yes, sir.</p> <p>16 Q. -- since she got this new job?</p> <p>17 A. Yes, sir.</p> <p>18 Q. More than twice?</p> <p>19 A. Yes, sir.</p> <p>20 Q. More than three times?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Okay. So about three times since Ms. Benson</p> <p>23 got this job, you've looked at her salary?</p>	<p>1 Q. Do you know the difference between the two?</p> <p>2 A. No, sir. I can't think of that now.</p> <p>3 Q. Do you have it written down somewhere?</p> <p>4 A. No. I really don't think I -- I wrote it down</p> <p>5 at that point in time to see what the</p> <p>6 difference was, but other than that --</p> <p>7 probably I shredded it.</p> <p>8 Q. Did you keep any part of what you wrote down</p> <p>9 about her salary or about the difference</p> <p>10 between your salary and Ms. Benson's salary?</p> <p>11 A. No, sir, I did not.</p> <p>12 Q. Any other reason you looked at Ms. Benson's</p> <p>13 salary?</p> <p>14 A. No.</p> <p>15 Q. Have you ever looked at Ms. Benson's salary in</p> <p>16 the ordinary course of your job?</p> <p>17 MR. MOZINGO: Object to the form of</p> <p>18 the question.</p> <p>19 A. I've never had a reason to look at her salary</p> <p>20 before now.</p> <p>21 Q. So the answer is no?</p> <p>22 A. No.</p> <p>23 Q. So we have one element of monetary damages,</p>
Page 39	Page 41
<p>1 A. Three times. It might be more. I don't</p> <p>2 know. I don't know how many times I've pulled</p> <p>3 her screen up.</p> <p>4 Q. And what was the reason for your pulling her</p> <p>5 screen up when you did?</p> <p>6 A. One thing was to find out what the difference</p> <p>7 in her pay and my pay was.</p> <p>8 Q. So one thing was to just see the difference in</p> <p>9 pay, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Any other reason?</p> <p>12 A. None that I know of.</p> <p>13 Q. When was the last time you did it?</p> <p>14 A. Probably last week.</p> <p>15 Q. Let's see. This is the first week of June.</p> <p>16 June 2nd, right? June 2nd. So sometime the</p> <p>17 week before Monday, June 2nd?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Sometime during that week?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Why did you look at it then?</p> <p>22 A. To find out the difference in her pay and</p> <p>23 mine.</p>	<p>1 and that would be the retirement money that</p> <p>2 you've told me about, the back pay, the</p> <p>3 difference in pay between your pay and the pay</p> <p>4 received by the person that received the job</p> <p>5 that you wanted, social security benefits.</p> <p>6 What other money damages have you</p> <p>7 sustained? What other damages have you</p> <p>8 sustained that can be compensated by money?</p> <p>9 A. I feel that I should be compensated for</p> <p>10 damages because of my health. Since all this</p> <p>11 began, I have developed health problems.</p> <p>12 Q. Can you tell me all the health problems that</p> <p>13 you have had? Tell me all of the health</p> <p>14 problems that have first arisen since</p> <p>15 September 15, 2005.</p> <p>16 A. I've been diagnosed with anxiety.</p> <p>17 Q. We're talking first, now, right? First time.</p> <p>18 A. This is the first time I've ever been</p> <p>19 diagnosed with anxiety.</p> <p>20 Q. Okay. What else?</p> <p>21 A. I can't sleep. I have to have something to</p> <p>22 help me sleep.</p> <p>23 Q. What else?</p>

Deposition of Joan Owens

June 2, 2008

Page 42	Page 44
<p>1 A. High blood pressure. I have always run a low 2 blood pressure until this happened. 3 Q. What else? 4 A. That's enough. 5 Q. Well, is that all, though? 6 A. Yes, sir. 7 Q. Have you been treated for these things, these 8 three things? 9 A. Yes, sir. 10 Q. By a physician? 11 A. Yes, sir. 12 Q. By more than one physician? 13 A. No, sir, my family physician. 14 Q. And who is that again? 15 A. Dr. Bipin Kumar, Wetumpka, Alabama. 16 Q. Dr. who, now? 17 A. B-I-P-I-N, K-U-M-A-R. 18 Q. B-I-P-I-N Kumar? 19 MR. NIX: Flynn, in the responses 20 that y'all gave to me, you said 21 that you would be agreeable to 22 entering into some type of 23 limited HIPAA order.</p>	<p>1 Q. Do you have one pharmacy you always use? 2 A. Yes, sir. 3 Q. What pharmacy? 4 A. Thames Pharmacy in Wetumpka. 5 Q. Thames. 6 And then have you been given anything for 7 sleep? 8 A. That Klonopin will help me sleep. 9 Q. So the same thing? 10 A. Yes, sir. 11 Q. Have you been given anything for high blood 12 pressure? 13 A. Yes, sir, and I don't know the name of it. 14 I'm sorry. I can't think of it right now. 15 Q. But the same doctor gave you all of these? 16 A. Yes. I tried to take exercise that helps with 17 my blood pressure. 18 Q. Do you know -- 19 A. My blood pressure is the type that goes up and 20 down. 21 MR. MOZINGO: Tell me if you need a 22 break. 23 THE WITNESS: I'm okay.</p>
Page 43	Page 45
<p>1 MR. MOZINGO: Yes. 2 MR. NIX: I guess perhaps we should 3 talk about some type of order 4 that would be appropriate. 5 MR. MOZINGO: We can do that. 6 MR. NIX: I'd like to get it done -- 7 you know, I would like to get it 8 hammered out or whatever this 9 week if we can. 10 MR. MOZINGO: Sure. That's no 11 problem. 12 MR. NIX: Okay. 13 Q. Now, Ms. Owens, have you been given medication 14 for anxiety? 15 A. Yes, sir. 16 Q. What have you been given? 17 A. Something called Klonopin. I may not be 18 saying that right. 19 Q. All right. Klonopin? Anything else for 20 anxiety? 21 A. That's it. 22 Q. Do you know when you first received that? 23 A. No, sir. I don't know the exact date.</p>	<p>1 MR. NIX: Yeah, if you need a break, 2 by all means you're welcome to 3 have one. 4 THE WITNESS: I'm okay. 5 Q. Now, how long have you had Dr. Bipin Kumar 6 for ... 7 A. For 30 years. 8 Q. Oh, really? 30 years. He's been your general 9 physician for that length of time? 10 A. He's an internist. 11 Q. He's an internist, and he's in Wetumpka? 12 A. Yes, sir. 13 Q. Before September 15, 2005, had you ever had 14 any problems with anxiety? 15 A. No, sir. 16 Q. Before September 15, 2005, had you ever -- 17 wait a minute. Yeah, it was 2005 when it was 18 announced, and then 2006 when it was filled, 19 wasn't it? 20 A. (Witness nods head up and down.) 21 Q. Before September 15, 2005, had you ever had 22 any problem with nervousness? 23 A. No. I mean, I got nervous about things, but I</p>

Deposition of Joan Owens

June 2, 2008

Page 46	Page 48
<p>1 didn't have to have any type medication for</p> <p>2 it.</p> <p>3 Q. Did you seek counsel from Dr. Kumar about</p> <p>4 those things?</p> <p>5 A. Nervousness?</p> <p>6 Q. Yeah.</p> <p>7 A. No.</p> <p>8 Q. Prior to September 15, 2005, had you ever had</p> <p>9 any depression?</p> <p>10 A. No, sir.</p> <p>11 Q. Prior to September 2000 -- I'm sorry. Go</p> <p>12 ahead.</p> <p>13 A. I've never had mental problems before 2005.</p> <p>14 I've never sought any help for any type mental</p> <p>15 condition.</p> <p>16 Q. Has Dr. Kumar ever given you anything other</p> <p>17 than Klonopin for your anxiety?</p> <p>18 A. No, sir.</p> <p>19 Q. Has Dr. Kumar ever given you anything other</p> <p>20 than Klonopin for your inability to sleep or</p> <p>21 difficulty sleeping?</p> <p>22 A. No, sir.</p> <p>23 Q. And has he ever given you more than one blood</p>	<p>1 Q. How long have you had palsy?</p> <p>2 A. I don't know.</p> <p>3 Q. Has Dr. Kumar treated you for palsy?</p> <p>4 A. There's nothing you can do for it.</p> <p>5 Q. Have you seen him for palsy?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any other kinds of medical</p> <p>8 problems?</p> <p>9 A. None that I know of.</p> <p>10 Q. What other doctors have you seen in the past</p> <p>11 other than Dr. Kumar?</p> <p>12 A. Dr. Alex Johnson. He's --</p> <p>13 Q. OB-GYN?</p> <p>14 A. For my yearly lady's checkup.</p> <p>15 Q. Does he still do GYN?</p> <p>16 A. Just for select few he says.</p> <p>17 Q. He's a wonderful guy, isn't he?</p> <p>18 A. Yes.</p> <p>19 Q. He's a good friend of mine. Been knowing Alex</p> <p>20 a long time.</p> <p>21 So you've been seeing him for a good</p> <p>22 while?</p> <p>23 A. Alex Johnson?</p>
Page 47	Page 49
<p>1 pressure medication, one type of medication?</p> <p>2 A. I believe he tried one. I'm not remembering</p> <p>3 real well. And then he put me on another kind</p> <p>4 because -- it's like I said, my blood pressure</p> <p>5 goes up and down. It could pull it too far</p> <p>6 down.</p> <p>7 Q. Right. With regard to your inability to</p> <p>8 sleep, had you ever had any problems being</p> <p>9 unable to sleep prior to September 15, 2005?</p> <p>10 A. No.</p> <p>11 Q. Had you ever seen a doctor about having</p> <p>12 problems with sleep prior to September 15,</p> <p>13 2005?</p> <p>14 A. No, sir. It would have been Dr. Kumar, and,</p> <p>15 no, I haven't.</p> <p>16 Q. Prior to September 15, 2005, had you ever had</p> <p>17 any blood pressure problems of any kind?</p> <p>18 A. No, sir.</p> <p>19 Q. So the first blood pressure problems you ever</p> <p>20 had were after September 15, 2005?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Do you have any other medical conditions?</p> <p>23 A. I have palsy.</p>	<p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever had any children?</p> <p>4 A. Yes. Three.</p> <p>5 Q. Did he deliver those?</p> <p>6 A. No.</p> <p>7 Q. He did not?</p> <p>8 A. B. F. Dorrough.</p> <p>9 Q. Dr. Dorrough did. Okay.</p> <p>10 Have you been to see any other doctors</p> <p>11 besides Dr. Johnson?</p> <p>12 A. Dr. Matthews. He's a dermatologist, and I had</p> <p>13 a questionable spot on my face that he took</p> <p>14 off.</p> <p>15 Q. I'm sorry. Dr. what Matthews?</p> <p>16 A. I think his name is Herbert or Hubert</p> <p>17 Matthews. He's a dermatologist.</p> <p>18 Q. Here in Montgomery?</p> <p>19 A. Yes, sir.</p> <p>20 Q. When was this?</p> <p>21 A. Sir, I don't know. I had a spot that I</p> <p>22 thought might have been something bad on my</p> <p>23 face, and he took it off.</p>



Deposition of Joan Owens

June 2, 2008

Page 50	Page 52
<p>1 Q. That's the only thing you saw him for?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Any other doctors you've seen before?</p> <p>4 A. No.</p> <p>5 Q. That's it?</p> <p>6 A. I've always been healthy.</p> <p>7 Q. So these are the doctors you've ever seen,</p> <p>8 correct?</p> <p>9 MR. MOZINGO: You're asking her in</p> <p>10 her entire life?</p> <p>11 MR. NIX: Well, the last ten or 15</p> <p>12 years probably.</p> <p>13 MR. MOZINGO: Last ten or 15 years.</p> <p>14 A. I had gallbladder surgery back in -- it was</p> <p>15 either '99 or 2000.</p> <p>16 Q. Who did that?</p> <p>17 A. Dr. England.</p> <p>18 Q. England?</p> <p>19 A. Uh-huh. (Positive response.) Yes.</p> <p>20 Q. In Montgomery?</p> <p>21 A. No, Wetumpka.</p> <p>22 Q. Oh, really? Dr. England in Wetumpka. Okay.</p> <p>23 Any other doctors?</p>	<p>1 you've been in the hospital?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Having your babies and then having your</p> <p>4 gallbladder --</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay.</p> <p>7 THE WITNESS: Could we have a break</p> <p>8 now?</p> <p>9 MR. NIX: Sure.</p> <p>10 (Brief recess was taken.)</p> <p>11 Q. Ms. Owens, I believe it's paragraph 42 on page</p> <p>12 13 of your complaint, it shows a list of types</p> <p>13 of damages. Okay?</p> <p>14 MR. MOZINGO: Do you have that so</p> <p>15 she can look at it?</p> <p>16 MR. NIX: Yeah.</p> <p>17 Q. Wait a minute. I may have the page wrong.</p> <p>18 Hold on. No, I don't. I turned too far.</p> <p>19 Page 13, paragraph 42, at the bottom of that</p> <p>20 paragraph.</p> <p>21 MR. MOZINGO: The bottom of</p> <p>22 paragraph 42?</p> <p>23 MR. NIX: Right.</p>
Page 51	Page 53
<p>1 A. Dr. Paul Moore, a cardiologist in Montgomery.</p> <p>2 Q. When did you see him?</p> <p>3 A. '99 or 2000. They thought my gallbladder</p> <p>4 trouble was my heart.</p> <p>5 Q. How many times did you see Dr. Moore?</p> <p>6 A. Once.</p> <p>7 Q. Any other doctors you've seen?</p> <p>8 A. As best I can remember, none.</p> <p>9 Q. I guess you -- let's see. You had your</p> <p>10 gallbladder surgery at, what? Wetumpka</p> <p>11 Hospital? Would that be the right name of it?</p> <p>12 A. Elmore Community Hospital.</p> <p>13 Q. Elmore Community Hospital. Have you had any</p> <p>14 other surgery there at that hospital?</p> <p>15 MR. MOZINGO: In the last ten or 15</p> <p>16 years?</p> <p>17 MR. NIX: Right.</p> <p>18 A. No.</p> <p>19 Q. Have you been in the hospital anywhere else</p> <p>20 for anything?</p> <p>21 A. Had my babies 30-something years ago at</p> <p>22 Baptist South.</p> <p>23 Q. Is that all? That's the only other times</p>	<p>1 MR. MOZINGO: That says as a result?</p> <p>2 MR. NIX: Yeah.</p> <p>3 Q. I just want you to understand what I'm trying</p> <p>4 to do today is to get as much information as I</p> <p>5 possibly can about your lawsuit, okay --</p> <p>6 A. I understand.</p> <p>7 Q. -- and about the things that you claim. It's</p> <p>8 real important to me to know it as well as I</p> <p>9 can and to get as much information as I can.</p> <p>10 A. I understand.</p> <p>11 Q. The first one listed is mental pain and</p> <p>12 anguish.</p> <p>13 A. Yes.</p> <p>14 Q. Is that one of the elements of your damages in</p> <p>15 the case?</p> <p>16 A. Yes.</p> <p>17 Q. Have you already described that to me?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And does that have to do with the anxiety and</p> <p>20 the inability to sleep easily or well?</p> <p>21 A. Yes.</p> <p>22 Q. And that's what you take the Klonopin for; is</p> <p>23 that right?</p>

Deposition of Joan Owens

June 2, 2008

Page 54

1 A. Yes.  
 2 Q. And that's it, right?  
 3 A. Well, my high blood pressure is in there.  
 4 Q. All right.  
 5 A. I've never had high blood pressure before now.  
 6 Q. Okay. High blood pressure and anxiety and  
 7 sleep.  
 8 A. Yes, sir.  
 9 Q. Is there anything else under the category of  
 10 mental pain and anguish that you claim money  
 11 for?  
 12 A. No.  
 13 Q. Have you put any kind of dollar value on those  
 14 claims?  
 15 A. Not really.  
 16 Q. Okay.  
 17 A. I just feel that I should be compensated for  
 18 that.  
 19 Q. Okay. Tell me why you think that you have  
 20 anxiety and high blood pressure and have a  
 21 difficult time sleeping as a result of this.  
 22 A. I feel that out of nothing that I have done,  
 23 only the color of my skin was the reason why I

Page 55

1 was unable to apply. It wasn't because I  
 2 didn't know my job. It wasn't because I had  
 3 not done my job. It wasn't because I couldn't  
 4 do my job. I've been in the work force many  
 5 years.  
 6 Q. Okay. So you feel like that the color of your  
 7 skin is the sole reason for your not being  
 8 able to apply for this job?  
 9 A. Or I would have gotten the job.  
 10 Q. And you think you would have gotten the job if  
 11 you had been able to apply. And for that  
 12 reason, you have this anxiety and high blood  
 13 pressure and difficulty sleeping?  
 14 A. Yes, sir.  
 15 Q. Now, the next item there is financial  
 16 disadvantage. You've told me about social  
 17 security income, if you had a higher salary,  
 18 more money would be taken out, I assume, and  
 19 that would give you more benefits later on.  
 20 Is that the way that works?  
 21 A. That's my understanding. The more money you  
 22 make, the more social security comes out,  
 23 you'll draw more when you retire.

Page 56

1 Q. And then your retirement with the State?  
 2 A. My retirement with the State, it's more or  
 3 less the same way.  
 4 Q. Right. They take the highest three years of  
 5 your income and use that as kind of the basis,  
 6 and this would have increased your income and  
 7 increased your retirement. Is that what  
 8 you're saying?  
 9 A. We have a book that you can look at, and you  
 10 can look at what your salary is and kind of  
 11 know how much you will draw. But until you  
 12 really see one of the retirement counselors,  
 13 you really don't know how much you'll draw.  
 14 So the money that I told you, I am just  
 15 making a guess. I don't really know how  
 16 much. I just know that it would be a lot more  
 17 than what I'm going to draw when I retire.  
 18 Q. And salary is another part of that financial  
 19 disadvantage?  
 20 A. Yes, sir. I would have gotten a raise in pay.  
 21 Q. So are there any other parts to that financial  
 22 disadvantage category?  
 23 A. As far as I know right now, that's it.

Page 57

1 Q. Does this financial disadvantage aspect of the  
 2 damages cause you to have anxiety or  
 3 difficulty sleeping or high blood pressure?  
 4 A. No.  
 5 Q. How about embarrassment? You mentioned  
 6 embarrassment. Tell me about that again. You  
 7 say people would come in and say --  
 8 A. Why didn't you apply, Joan? Well, I couldn't  
 9 because the clause was not in the  
 10 announcement.  
 11 Q. Okay.  
 12 A. I don't have a four-year degree.  
 13 Q. Okay.  
 14 A. And, you know, it's not just within Central  
 15 Office. I've worked in almost every one of  
 16 the facilities because I'm the person that  
 17 travels. And I had lots of people ask me  
 18 about the job and why.  
 19 Q. So tell me the names of the people that have  
 20 asked you about it.  
 21 A. I don't know. I really don't know. I can't  
 22 think.  
 23 MR. MOZINGO: If you can recall any

Deposition of Joan Owens

June 2, 2008

Page 58	Page 60
<p>1 right now. And if you can't,</p> <p>2 just tell him you can't recall</p> <p>3 any right now.</p> <p>4 A. I can't recall right now. If I think, do you</p> <p>5 want me to tell you later?</p> <p>6 Q. Absolutely.</p> <p>7 A. Okay.</p> <p>8 Q. I sure do.</p> <p>9 A. Yes, sir.</p> <p>10 Q. But at this point in time, you can't recall a</p> <p>11 single name of any person that asked you that</p> <p>12 question?</p> <p>13 A. Sir, this has been almost three years ago.</p> <p>14 Q. Did the people that asked you that question</p> <p>15 ask you right close to the time when the job</p> <p>16 was announced or awarded to someone else?</p> <p>17 A. It was right afterwards.</p> <p>18 Q. Right after what?</p> <p>19 A. When it was announced.</p> <p>20 Q. When it was announced?</p> <p>21 A. When it was announced that Ms. Benson got the</p> <p>22 job.</p> <p>23 Q. Okay. So they stopped after a period of time?</p>	<p>1 A. I remember one person in particular.</p> <p>2 Q. All right.</p> <p>3 A. Jeff Williams.</p> <p>4 Q. Who?</p> <p>5 A. Jeff Williams.</p> <p>6 Q. Where is --</p> <p>7 A. He works at Central Office.</p> <p>8 Q. Jeff Williams.</p> <p>9 A. And he asked me why I didn't apply.</p> <p>10 Q. Okay. And you gave him this same answer?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Did he give you a response?</p> <p>13 A. He didn't say any more about it.</p> <p>14 Q. Did he say anything like, why did they choose</p> <p>15 Marilyn Benson or you would have been better</p> <p>16 than Marilyn Benson, anything like that?</p> <p>17 A. No, sir.</p> <p>18 Q. He just said why didn't you --</p> <p>19 A. Why didn't you apply for that job or something</p> <p>20 to that effect. I said, I couldn't. I didn't</p> <p>21 meet minimum qualifications.</p> <p>22 Q. All right. There's another one. The next one</p> <p>23 is trauma.</p>
Page 59	Page 61
<p>1 A. Yes, sir.</p> <p>2 Q. About how long?</p> <p>3 A. Oh, a month or so afterwards.</p> <p>4 Q. And what would your answer be when they would</p> <p>5 ask you?</p> <p>6 A. I would tell them that I didn't meet minimum</p> <p>7 qualifications. The clause was not in it.</p> <p>8 The clause was not in the minimum --</p> <p>9 Q. The substitution clause was not in there?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you say anything about not having a</p> <p>12 degree?</p> <p>13 MR. MOZINGO: Object to the form. I</p> <p>14 didn't understand your question,</p> <p>15 Chip.</p> <p>16 MR. NIX: I apologize. I kind of</p> <p>17 mumbled that.</p> <p>18 Q. Did you say anything to the people that asked</p> <p>19 you this question about not having a</p> <p>20 bachelor's degree?</p> <p>21 A. I'm sure I did.</p> <p>22 Q. Were all of these people, people at various</p> <p>23 facilities?</p>	<p>1 MR. MOZINGO: That's embarrassment,</p> <p>2 trauma, and humiliation.</p> <p>3 MR. NIX: I'm sorry.</p> <p>4 Q. Well, trauma. Let's do trauma first because</p> <p>5 they're different to me. Trauma, what's</p> <p>6 trauma?</p> <p>7 A. Do you not think I felt trauma having to tell</p> <p>8 somebody that I could not apply for a job?</p> <p>9 Would that not affect you?</p> <p>10 Q. No, ma'am, it wouldn't, frankly. But, I</p> <p>11 mean --</p> <p>12 A. Well, then, it affected me.</p> <p>13 Q. Okay.</p> <p>14 A. Because I had worked for the Department at</p> <p>15 that point in time -- three years ago, I had</p> <p>16 worked for the Department for 15 years, and I</p> <p>17 had held down various positions. And not</p> <p>18 being able to apply for that job caused a</p> <p>19 certain amount of trauma.</p> <p>20 Q. And when we say trauma, would you tell me what</p> <p>21 you mean by that? Trauma.</p> <p>22 A. I think anguish maybe would be a good ...</p> <p>23 Q. Okay. All right. Is that it on trauma?</p>

Page 62	Page 64
<p>1 A. Yes, sir.</p> <p>2 Q. Okay. How long did you feel that trauma?</p> <p>3 A. I still feel it.</p> <p>4 Q. Has it diminished any other time?</p> <p>5 A. No. Today, it's very high.</p> <p>6 Q. Well, I'm sure it is today because we're</p> <p>7 taking a deposition about it. But in the</p> <p>8 normal course of things, normal everyday</p> <p>9 business, has it diminished?</p> <p>10 A. No, sir. I think about it every day. It</p> <p>11 hurts every day to go to work.</p> <p>12 Q. Humiliation. You've told me something about</p> <p>13 the humiliation. For example, under</p> <p>14 embarrassment, you said that people would say</p> <p>15 why didn't you apply, and you would say I</p> <p>16 didn't meet the minimum qualifications, no</p> <p>17 substitution, no bachelor's degree or</p> <p>18 whatever.</p> <p>19 A. They go hand in hand more or less.</p> <p>20 Q. Humiliation and embarrassment are basically</p> <p>21 the same then?</p> <p>22 MR. MOZINGO: Object to the form.</p> <p>23 Q. Well, you tell me. How are they different?</p>	<p>1 fault, right?</p> <p>2 A. Basically it's not my fault.</p> <p>3 Q. This is what is hard for me to understand on</p> <p>4 some of your damages claims. Why, for</p> <p>5 example, would you be embarrassed or</p> <p>6 humiliated by something that occurred that you</p> <p>7 say is not your fault?</p> <p>8 MR. MOZINGO: I'm going to object to</p> <p>9 the form. She's already</p> <p>10 explained her embarrassment and</p> <p>11 humiliation and why that</p> <p>12 resulted. I think that's being</p> <p>13 repetitive.</p> <p>14 MR. NIX: I don't think so at all.</p> <p>15 I mean, I think it's a totally</p> <p>16 different question.</p> <p>17 Q. In the context of your lawsuit, you're saying</p> <p>18 that other people were at fault for this, not</p> <p>19 you. You had nothing to do with this. It's</p> <p>20 not your fault. Why would you feel</p> <p>21 embarrassed or humiliated in view of that, in</p> <p>22 view of your contentions that it's not your</p> <p>23 fault?</p>
Page 63	Page 65
<p>1 How are embarrassment and humiliation</p> <p>2 different, if they are?</p> <p>3 A. Well, I think embarrassment is something that</p> <p>4 happens as you're speaking to somebody,</p> <p>5 talking to somebody.</p> <p>6 Humiliation can -- you can be humiliated</p> <p>7 without talking to somebody. You can sit at</p> <p>8 your desk and feel humiliated. Humiliation I</p> <p>9 think goes deep within.</p> <p>10 Q. Anything else about humiliation?</p> <p>11 A. No, sir.</p> <p>12 Q. Now, Ms. Owens, you have contended -- you</p> <p>13 contend in your lawsuit that you were</p> <p>14 discriminated against because of your race.</p> <p>15 You contend that your rights were violated.</p> <p>16 You contend that certain torts were committed</p> <p>17 against you in all of this.</p> <p>18 You contend it wasn't your fault. You</p> <p>19 simply say they left the substitution clause</p> <p>20 out and they've had it in other announcements,</p> <p>21 but they left it out. If they had put the</p> <p>22 substitution clause in, I could have gotten</p> <p>23 the job. So you've said basically it's not my</p>	<p>1 A. I feel that I have been a very good employee,</p> <p>2 a very good employee, and I am embarrassed of</p> <p>3 the fact that my employer did not want me in</p> <p>4 that position because of my race, not because</p> <p>5 of something that I did. I have done nothing,</p> <p>6 sir, and it is embarrassing to me that someone</p> <p>7 would treat me that way.</p> <p>8 Q. All right. Is that your complete answer?</p> <p>9 A. Yes.</p> <p>10 Q. Now, let me ask you this. Let's just assume</p> <p>11 for a minute, okay, that the process is done</p> <p>12 over completely. We're just making that</p> <p>13 assumption. Okay? I'm not agreeing that it</p> <p>14 should be. Okay? I'm just saying, let's you</p> <p>15 and I in this discussion assume that the</p> <p>16 process of developing the specs, announcing</p> <p>17 the job, grading the applications, doing all</p> <p>18 the other stuff that has to be done to get the</p> <p>19 right person for the job, if that's going to</p> <p>20 be done all over again, okay, can you go</p> <p>21 through with me, you know, what you would do</p> <p>22 assuming that there is a substitution clause.</p> <p>23 A. I would have filled out an application and</p>



Page 66	Page 68
<p>1 applied. I said that that's what I was going</p> <p>2 to do when I got the announcement in my hand</p> <p>3 before I read it and there was no clause in</p> <p>4 it, so I would have applied immediately.</p> <p>5 Q. All right. You would get the announcement and</p> <p>6 apply. Now, in the normal course of things,</p> <p>7 where would you send an application to on a</p> <p>8 job like this?</p> <p>9 MR. MOZINGO: Let me just object to</p> <p>10 the form of the question.</p> <p>11 Obviously, we contend there was</p> <p>12 no normal course of things. So</p> <p>13 if you want to try to ask her</p> <p>14 what she -- how she thinks she</p> <p>15 would go about applying, I think</p> <p>16 that would be a different</p> <p>17 question.</p> <p>18 Q. Do you know that Mike Mathis was the person --</p> <p>19 A. That accepted the applications.</p> <p>20 Q. That's right. Do you know him?</p> <p>21 A. Very well.</p> <p>22 Q. How do you know Mike Mathis?</p> <p>23 A. He's the Personnel Director at Partlow</p>	<p>1 Q. Just bear with me, though. Okay?</p> <p>2 A. Yes, sir.</p> <p>3 Q. This is important.</p> <p>4 Now, assume that Mike Mathis looked at</p> <p>5 your application and your qualifications.</p> <p>6 When you apply -- When a person applies for a</p> <p>7 job and it's clear that they're going to need</p> <p>8 substitution in order to get that job, do they</p> <p>9 have to make a request for substitution in the</p> <p>10 application or does that come later?</p> <p>11 A. They don't have to request it.</p> <p>12 Q. They do not?</p> <p>13 A. No, sir.</p> <p>14 Q. How does it come about that a person is</p> <p>15 considered for substitution?</p> <p>16 A. You fill out the application, and you fill it</p> <p>17 out as completely as you can. And when Mike</p> <p>18 graded those applications, he would have</p> <p>19 looked at my application and he would have</p> <p>20 figured up how many years of experience I had</p> <p>21 in personnel.</p> <p>22 Q. All right.</p> <p>23 A. That's what he would have done.</p>
Page 67	Page 69
<p>1 Developmental Center.</p> <p>2 Q. Do you believe Mike Mathis is a good personnel</p> <p>3 director?</p> <p>4 A. Yes.</p> <p>5 Q. Do you believe he's a fair person as a</p> <p>6 personnel director?</p> <p>7 A. Yes.</p> <p>8 Q. Do you believe he's qualified to grade</p> <p>9 applications for a job of this type?</p> <p>10 A. Yes.</p> <p>11 Q. Do you believe that he would honestly evaluate</p> <p>12 the applications for the job once they were</p> <p>13 received by him?</p> <p>14 A. Yes.</p> <p>15 I'm not contending that the interview</p> <p>16 process was not done correctly. What I am</p> <p>17 contending, I was denied the opportunity to</p> <p>18 even apply, sir. I'm not contending anything</p> <p>19 that Mike did was wrong or the interview</p> <p>20 process was wrong. I'm contending that I</p> <p>21 never was able to even get to that point.</p> <p>22 Q. I know.</p> <p>23 A. Okay.</p>	<p>1 Q. Now, as of November 15, 2005, how many years</p> <p>2 of experience did you have in personnel?</p> <p>3 MR. MOZINGO: Are you asking with</p> <p>4 the State or in her career?</p> <p>5 MR. NIX: Well, with the State</p> <p>6 first.</p> <p>7 MR. MOZINGO: Okay.</p> <p>8 A. I came on board December the 31st of 1990.</p> <p>9 Q. All right.</p> <p>10 A. Sir, I'm so nervous, I can't figure. I think</p> <p>11 around 15 years at that point in time with the</p> <p>12 State.</p> <p>13 Q. When did you come into a personnel position of</p> <p>14 the type necessary to be allowed for</p> <p>15 substitution?</p> <p>16 A. When I came to work with the State, but I also</p> <p>17 was the Personnel Director of Elmore Community</p> <p>18 Hospital.</p> <p>19 Q. When was that? You had other private</p> <p>20 experience is what you're saying?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Is private experience counted in the</p> <p>23 substitution aspect of the thing?</p>

Deposition of Joan Owens

June 2, 2008

Page 70	Page 72
<p>1 A. Yes, sir, I would count it. I was a personnel 2 director.</p> <p>3 Q. All right. So Mike would take your 4 experience -- look at your experience, and he 5 would say, okay, Ms. Owens has X number of 6 years of experience in personnel?</p> <p>7 A. Yes.</p> <p>8 Q. Now, are there any parameters about the type 9 of experience you have to have in order for it 10 to be counted as substitution?</p> <p>11 A. It would need to -- if the job is in 12 personnel, it would need to be in personnel. 13 It would be -- it would need to be the same 14 type. You couldn't use nursing experience for 15 a personnel job.</p> <p>16 Q. Okay. So he would determine that you had X 17 number of years in personnel?</p> <p>18 A. Many.</p> <p>19 Q. And he would determine that you did not have a 20 bachelor's degree, right?</p> <p>21 A. True.</p> <p>22 Q. How far did you go in school?</p> <p>23 A. I have a high school education, diploma, and I</p>	<p>1 degree?</p> <p>2 A. I did not have the four-year degree.</p> <p>3 Q. So with Mike seeing that, okay, with Mike 4 Mathis seeing that, then what would he do?</p> <p>5 A. He would have taken my years of experience and 6 substituted -- at that point in time, they had 7 changed the substitution clause from one year 8 of experience to one year of education, they 9 changed it to two years of experience to one 10 year of education. So I would have had to 11 have had eight years of experience, which 12 clearly I've got.</p> <p>13 Q. To overcome the four-year degree?</p> <p>14 A. Yes, sir.</p> <p>15 Q. All right.</p> <p>16 A. Then I would have had to have had six more 17 years, because I think the application asked 18 for extensive which is, I think, about six 19 more years. I don't know. But I clearly have 20 enough, sir. I have many years of experience 21 in personnel.</p> <p>22 Q. What about a master's degree? Do you have a 23 master's degree?</p>
Page 71	Page 73
<p>1 also have a business school with Manpower 2 Training Center in Montgomery.</p> <p>3 Q. Can you tell me what the business school is?</p> <p>4 A. Well, I attended from August of '65 through 5 July of '66, and it was in business. And it 6 was a school that the government and state -- 7 I don't know what type school that was. But 8 it didn't cost money to go, because I couldn't 9 afford to go to another school. So I was able 10 to go to that, and I completed that.</p> <p>11 Q. Okay. Did you get a certificate of any kind?</p> <p>12 A. Yes, I did. I graduated from that.</p> <p>13 Q. And they gave you a certificate of completion?</p> <p>14 A. Completion, yes, sir.</p> <p>15 Q. And what did you learn in that course?</p> <p>16 A. Well, we had business English, business math, 17 business law, business machines, speed 18 reading. I can't think of any more.</p> <p>19 Q. Okay. You do not consider that, though, a 20 bachelor's degree, do you?</p> <p>21 A. No, sir.</p> <p>22 Q. So in terms of the educational requirements, 23 clearly you did not meet the bachelor's</p>	<p>1 A. No, sir. I don't have a bachelor's. I don't 2 have a master's.</p> <p>3 Q. How many years of experience do you have to 4 have to substitute for a master's degree?</p> <p>5 A. Well, you would have to -- two-for-one.</p> <p>6 Q. And do you know how long --</p> <p>7 A. But this job did not call for a master's. It 8 said preference would be given to someone with 9 a master's degree, which is -- this is the 10 first one of those I've ever seen, somebody 11 given a preference for a master's degree.</p> <p>12 Q. Okay. Let's assume if a master's degree had 13 been required --</p> <p>14 A. We would have gone to 12 years instead of 15 eight.</p> <p>16 Q. Okay.</p> <p>17 A. But I would have still had enough experience.</p> <p>18 Q. So it's your belief, then, based on our 19 discussion that irrespective of who else might 20 have applied, you would have been one of the 21 people recommended by Mike Mathis to be 22 interviewed for the job; is that --</p> <p>23 A. Yes, I do.</p>

Page 74

1 Q. Can you be sure of that? Are you certain of  
2 that, that you would be one of the people  
3 recommended by him to be --  
4 A. If the clause had been in there, I would have  
5 been, because I would have had enough  
6 education -- I mean enough experience that I  
7 feel that I would have been one of the  
8 top-ranking candidates.  
9 Q. Then what? What's next?  
10 A. The interview process.  
11 Q. Okay. Tell me about that. How would that go?  
12 MR. MOZINGO: I'm going to object to  
13 the extent it calls for  
14 speculation. Are you just  
15 asking her how it routinely  
16 goes? Because she can't testify  
17 how it would have gone in her  
18 case because she never got  
19 there. Are you asking  
20 routinely?  
21 Q. We're speculating or -- we're doing a  
22 hypothetical, and we're saying if this job had  
23 had a substitution clause in it, what would

Page 75

1 the process be typically? And I'm not -- I  
2 mean, obviously, you can't testify exactly  
3 what it would be because it didn't have a  
4 substitution clause in it.  
5 A. That's true.  
6 Q. So tell me about --  
7 A. To eliminate me.  
8 Q. Tell me about how the interview process would  
9 be established and how it would be conducted.  
10 A. Well, after they find out the candidates that  
11 qualify -- they don't have to interview  
12 everyone that qualifies.  
13 Q. Why not?  
14 A. Well, if you've got 20 people that qualify,  
15 you don't want to interview 20 people, so you  
16 just interview the top-scoring candidates.  
17 So they set up an interview. If they  
18 want the interview to be 30 minutes or an hour  
19 or whatever, the interview is set up. And a  
20 letter is sent out to all the applicants that  
21 qualify to come in at two o'clock or one  
22 o'clock or whatever to an interview and all  
23 of --

Page 76

1 Q. A letter would be sent to all of the  
2 applicants that qualified and that were going  
3 to be interviewed?  
4 A. Yes, sir.  
5 Q. What would be sent to the applicants that  
6 qualified but were not going to be  
7 interviewed?  
8 A. A letter wouldn't be sent to them until after  
9 the interviewing process is over.  
10 Q. And what would that letter say?  
11 A. It would thank them for applying, but a job  
12 could not be offered to them at this time.  
13 Q. Do you know how it's decided if you've got a  
14 bunch of folks in the qualified pool, which of  
15 those folks would be interviewed?  
16 A. Yes, sir.  
17 Q. How?  
18 A. Well, they get points. We grade each  
19 application, and they get points. And the  
20 ones with the most points will be  
21 interviewed.  
22 Now, sometimes if you don't have very  
23 many people apply, everybody that meets

Page 77

1 minimum, you know, will be interviewed. But  
2 if you have lots of people that apply and they  
3 meet minimum, well, you're just going to  
4 interview the top -- ones with the most  
5 points.  
6 Q. Okay. Now, is it your assumption, Ms. Owens,  
7 that if there had been a substitution clause  
8 in this announcement that the same people  
9 would have applied plus you and that's all?  
10 MR. MOZINGO: Object to the form.  
11 If you understand his question,  
12 you can answer.  
13 Q. Do you understand what I'm saying?  
14 A. I understand what you're saying. What you're  
15 saying is that if the clause had been in  
16 there, it would have drawn more people to the  
17 applicant pool because there would have been  
18 more people that could have applied because --  
19 maybe they didn't have a college degree like I  
20 didn't have, but they had the experience. Is  
21 that not what you're implying?  
22 Q. That's what I'm asking you.  
23 A. Yes, sir.



Page 78	Page 80
<p>1 Q. If you believe you would be the only 2 additional person to apply -- 3 A. I'm sure Ms. Hubbard would have applied. 4 Q. Would any others besides the two of you in 5 your view have applied if the substitution 6 clause had been -- 7 A. There could have been. 8 Q. No way of knowing, though, is there? 9 A. No, sir. 10 Q. And there's no way of knowing if there had 11 been or would have been who those people would 12 have been? 13 A. Who could have, would have, should have, no. 14 Q. And there's no way of knowing if other people 15 would have applied what their qualifications 16 would have been, correct? 17 A. Correct. 18 Q. Now, let's go to the interview process 19 itself. Okay? 20 A. Yes, sir. 21 Q. Assume that -- how many people are going to be 22 interviewed? Six? Seven? Seven people. 23 Let's say seven people will be interviewed.</p>	<p>1 questions? 2 A. There's just one set of questions. Generally, 3 the personnel person that's taking care of the 4 interview asks those questions, but sometimes 5 the supervisor of whoever is being interviewed 6 asks the questions. It's not a set rule. But 7 it's just one set of questions. 8 Q. And then everybody makes their notes and does 9 what? 10 A. Everybody makes their notes. After that 11 person is through interviewing, they leave the 12 room and each person grades -- we have a 13 grading grid based on the questions that's 14 been asked. And each person grades and they 15 put their grading grid down on the table. 16 And if I'm the person conducting the 17 interview, I take them all up and you go to 18 the next candidate, bring the next candidate 19 in and ask them the same questions. Each 20 question is -- We do each applicant just alike 21 so that no one would have any unfair edge over 22 another. 23 Q. All right. Now, let me ask you this. In this</p>
Page 79	Page 81
<p>1 A. You can say seven. 2 Q. In this hypothetical -- yeah, we're just doing 3 a hypothetical. 4 A. Yes, sir. 5 Q. So if the substitution clause is in there, the 6 applications have been graded, whether there's 7 more than seven qualified or not, seven have 8 been -- 9 A. Chosen. 10 Q. -- chosen for interview. All right. 11 So then what would happen next? 12 A. Well, you would be interviewed. The seven 13 people would be interviewed. 14 Q. Do you know how that works, the interview 15 itself? 16 A. Yes, sir. That's what I do every day. 17 Q. Okay. How does that work then? 18 A. Well, the people come in and we have a panel, 19 and we have questions. And the panel grades 20 the applicants by the questions that's asked 21 about the job. 22 Q. Okay. Where are the -- Does everybody have 23 the same questions or do you make your own</p>	<p>1 situation that we're talking about where a 2 college degree is required but where 3 substitution is allowed, is there any question 4 in the interview process about the college 5 degree or the substitution experience? 6 A. No, sir. The only thing that would be 7 different in the interview is if the person 8 that is interviewed, if they have put down 9 that they have their -- have a degree, you 10 just make sure that they have their 11 transcript, that they produce their transcript 12 and remind -- if they haven't already sent it 13 in -- they're supposed to send it in when they 14 apply. But if they haven't, you tell them 15 that it has to be sent in. That would be the 16 only thing. 17 Q. All right. By the interview panel or by 18 anybody else that makes the selection of the 19 final employee, is the educational level of 20 the person considered? 21 A. No, sir. 22 Q. In the interview process or in the grid 23 sheets, is the educational level considered?</p>

Page 82	Page 84
<p>1 A. No, sir.</p> <p>2 Q. In the interview process or in the grid</p> <p>3 sheets, is the level of experience considered?</p> <p>4 A. No, sir. That's already been taken care of</p> <p>5 when the application was graded and the person</p> <p>6 was awarded points to get to the interview</p> <p>7 process. That's already been taken care of.</p> <p>8 Q. In other words, you're saying that the only</p> <p>9 time it matters that a person either has a</p> <p>10 degree or uses substitution is in the</p> <p>11 determination of whether that person gets</p> <p>12 interviewed?</p> <p>13 A. No, sir.</p> <p>14 Q. Well, then, explain it to me.</p> <p>15 A. The clause is in there and the person gets the</p> <p>16 interview. The person goes before the</p> <p>17 interview panel and they're selected and they</p> <p>18 don't have a degree. Okay? That's what we're</p> <p>19 talking about right now.</p> <p>20 Okay. At that point in time, that's --</p> <p>21 that's the person that has been selected.</p> <p>22 Then it has to be taken -- their application</p> <p>23 has to be taken before the Job Evaluation</p>	<p>1 turned in the transcript?</p> <p>2 A. One thing is, you can't hire somebody without</p> <p>3 a degree if one is required, plus that person</p> <p>4 could not have the experience. I mean, you</p> <p>5 know, here I've had -- for me to qualify, I've</p> <p>6 had to bring up about 12, 14 years of</p> <p>7 experience. And somebody comes in and they're</p> <p>8 using their degree as part of theirs, they</p> <p>9 could not qualify. That would be one thing.</p> <p>10 Q. You're saying they might not really have a</p> <p>11 degree?</p> <p>12 A. That's true.</p> <p>13 Q. And therefore, they'd have to make proof of</p> <p>14 that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Any other reason for that?</p> <p>17 A. Well, that would be it, is because you're</p> <p>18 required it. It has to be there.</p> <p>19 Q. So the interview panel takes into</p> <p>20 consideration the interview itself and marks</p> <p>21 the grid, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What does the interview panel have before it?</p>
Page 83	Page 85
<p>1 Committee, and they discuss how the experience</p> <p>2 is relative -- that they have -- to the job.</p> <p>3 And they vote on whether the person's</p> <p>4 experience should qualify them and that they</p> <p>5 can get the job.</p> <p>6 MR. MOZINGO: Chip, it's 12:00. Do</p> <p>7 you want to go --</p> <p>8 MR. NIX: Let me finish this line</p> <p>9 and then we can go to lunch.</p> <p>10 Q. So the degree versus the experience is not</p> <p>11 discussed in the interview process --</p> <p>12 A. No, sir.</p> <p>13 Q. -- except the transcript aspect?</p> <p>14 A. At the very end, it would be me as the</p> <p>15 Personnel person, I would say, we haven't</p> <p>16 received your transcript yet. We need it or</p> <p>17 whatever. And they usually will say, well,</p> <p>18 I've already contacted whatever school it is</p> <p>19 and it's on the way or I'll make sure it gets</p> <p>20 here or whatever.</p> <p>21 Q. Well, if it doesn't matter whether they've got</p> <p>22 a bachelor's degree or not, once they get to</p> <p>23 that point, why does it matter if they haven't</p>	<p>1 What information about the applicant does the</p> <p>2 interview panel --</p> <p>3 A. They have a copy of their application. We</p> <p>4 make a copy of everybody's application and</p> <p>5 hand them out to each one of the panel members</p> <p>6 and they get to look at that application.</p> <p>7 Q. Would the application have any indication on</p> <p>8 it as to whether the person had a degree or</p> <p>9 not?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Okay. If a panel member is evaluating a</p> <p>12 person on a grid based upon an interview and</p> <p>13 they have the application before them, what's</p> <p>14 to prevent them from raising a person's grade</p> <p>15 on the grid based upon the fact that -- you</p> <p>16 know, on one particular part of it?</p> <p>17 I know there's several different topics,</p> <p>18 but what's to prevent the interviewer from</p> <p>19 giving a person a higher mark on a particular</p> <p>20 topic because they've got a degree as opposed</p> <p>21 to experience?</p> <p>22 A. Well, sir, the questions are based on the</p> <p>23 KSA's, which is knowledge, skills, and</p>

Page 86	Page 88
<p>1 abilities. And when I ask you a question</p> <p>2 about your ability to do an interview,</p> <p>3 while -- I would hope that the person that's</p> <p>4 on the panel would grade you on your answer as</p> <p>5 to how you would conduct an interview, not</p> <p>6 looking that you attended the University of</p> <p>7 Alabama or the University of Auburn. I would</p> <p>8 hope they would grade you on how well you</p> <p>9 answered that question.</p> <p>10 Q. How long did you say these interviews are?</p> <p>11 A. Some of them you can do very quickly. Some 30</p> <p>12 minutes, some 45 minutes. I have had some</p> <p>13 that lasted an hour.</p> <p>14 Q. Okay.</p> <p>15 A. Around an hour.</p> <p>16 Q. So you're saying that a panel member -- how</p> <p>17 many people are on the panel? Five?</p> <p>18 A. Well, sometimes you can have seven or eight</p> <p>19 people on a panel, and sometimes you can have</p> <p>20 three, maybe four people on a panel.</p> <p>21 Q. Are you saying that it's prohibited for a</p> <p>22 panel member to look at the application of a</p> <p>23 person being interviewed and see that they</p>	<p>1 answering those questions because I have -- I</p> <p>2 have graded the person already. We have a</p> <p>3 grading grid, and that's how you got to the</p> <p>4 interview is I graded you according to your</p> <p>5 qualifications, and that's how you got in</p> <p>6 there.</p> <p>7 Q. Yeah, you've graded the person on paper.</p> <p>8 A. Yes, sir, pertaining to education and</p> <p>9 experience. I've already graded you on that.</p> <p>10 Q. You've graded it for the purpose of whether or</p> <p>11 not they qualify --</p> <p>12 A. And how well they qualify.</p> <p>13 Q. -- to be interviewed?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And how well they qualify?</p> <p>16 A. Yes. I told you, you know, you get points.</p> <p>17 Q. If a person has a bachelor's degree, a</p> <p>18 master's degree, and significant experience --</p> <p>19 A. They're going to be at the top.</p> <p>20 Q. If a person does not have a bachelor's degree,</p> <p>21 a master's degree, but does have a lot of</p> <p>22 experience, will they receive a lower grade</p> <p>23 because they don't have a degree? This is on</p>
Page 87	Page 89
<p>1 have a bachelor's degree or a master's degree</p> <p>2 and look at the topic being considered and</p> <p>3 consider the answer, the application with that</p> <p>4 information on it about the degree, and give</p> <p>5 that person a higher score than they otherwise</p> <p>6 would have gotten without a degree? Are you</p> <p>7 saying that's prohibited?</p> <p>8 A. I'm not saying that's prohibited. I'm saying</p> <p>9 that we ask that the panel grade the person on</p> <p>10 how well they answer the interview questions,</p> <p>11 because we've already graded that person on</p> <p>12 their education and experience.</p> <p>13 You're not grading the person when you</p> <p>14 serve on a panel on their experience and</p> <p>15 education. You're grading them on how well</p> <p>16 they do in the interview. I've already taken</p> <p>17 care of that by the time you get in there as a</p> <p>18 panel member.</p> <p>19 Now, what you do as a panel member I</p> <p>20 can't help, you know. I can't say, no, you</p> <p>21 can't do that and, no, you shouldn't do that.</p> <p>22 What you should be grading on is how well that</p> <p>23 person performed in that interview in</p>	<p>1 the grading of the application.</p> <p>2 A. Well, it's according to how much experience</p> <p>3 they have.</p> <p>4 (Brief interruption.)</p> <p>5 A. It's according to how much experience they</p> <p>6 have.</p> <p>7 Q. Okay. But if they have both, even though they</p> <p>8 may not have quite as much experience as one</p> <p>9 other person that does not have a bachelor's</p> <p>10 degree or a master's degree, they have some</p> <p>11 experience, but they don't have quite as much</p> <p>12 as another person that does not have a</p> <p>13 bachelor or a master's, don't you think they'd</p> <p>14 be graded higher, having a bachelor or a</p> <p>15 master's?</p> <p>16 A. They could be. It's according to how much</p> <p>17 experience the other person has got. If the</p> <p>18 other person is sitting there with 20 plus</p> <p>19 years of experience in that, they can</p> <p>20 substitute -- they can use experience and</p> <p>21 substitute and still be just as high as the</p> <p>22 person with the education.</p> <p>23 Q. Okay. Now, let me ask you this. In the --</p>

Page 90	Page 92
<p>1 once a person gets to the interview process --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- I take it you do not give people any extra</p> <p>4 points on the chart or the grid in a</p> <p>5 particular area merely because they have a</p> <p>6 degree. Would that be true?</p> <p>7 A. Yes, sir, because they've already been graded</p> <p>8 on the degree. What you're grading them on in</p> <p>9 the interview is how well they participate and</p> <p>10 how well they answer the questions in the</p> <p>11 interview.</p> <p>12 Q. All right. Then you're saying, however, that</p> <p>13 it's not prohibited for an interviewer to give</p> <p>14 additional points because a person has a</p> <p>15 bachelor's degree or a master's degree, right?</p> <p>16 A. You can't help what somebody does, but that</p> <p>17 would not be correct to do.</p> <p>18 Q. But it's not prohibited, right?</p> <p>19 A. No.</p> <p>20 Q. I mean, you obtain interviewers from the</p> <p>21 staffs of various places, correct?</p> <p>22 A. Yes, sir, but a question if it is asked on an</p> <p>23 interview, are you going to grade that person</p>	<p>1 you, that other people on panels would give</p> <p>2 extra points?</p> <p>3 A. No, I don't know, but I would hope that they</p> <p>4 wouldn't. I would hope that they would grade</p> <p>5 the person on how well they did in the</p> <p>6 interview and in answering the questions.</p> <p>7 Q. Now, you said earlier that sometimes</p> <p>8 supervisors -- the supervisor of the person</p> <p>9 that's going to be employed will sit in and be</p> <p>10 a part of the interview process.</p> <p>11 A. We try to make sure the supervisor is always</p> <p>12 there.</p> <p>13 Q. Now you do, right?</p> <p>14 A. We always have.</p> <p>15 Q. Is that right? You always have?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Are you sure about that?</p> <p>18 A. Well, we try very hard.</p> <p>19 Q. Okay. If the supervisor of that person is</p> <p>20 looking at a person that has a bachelor's</p> <p>21 degree, a master's degree and a significant</p> <p>22 amount of experience in the field and answers</p> <p>23 questions over a 30-minute period of time, are</p>
Page 91	Page 93
<p>1 on his education rather than on the question</p> <p>2 that was asked?</p> <p>3 Q. Well, you're telling me --</p> <p>4 A. Well, I don't, and I would hope that no one on</p> <p>5 my panel would do that.</p> <p>6 Q. Well, what you're telling me, Ms. Owens, is</p> <p>7 that you've got less than an hour typically --</p> <p>8 sometimes 30 minutes -- to interview somebody</p> <p>9 for a job. And you've got all of these</p> <p>10 factors to consider, and they include</p> <p>11 experience and education and all kinds of</p> <p>12 things. And so you ask a person a question</p> <p>13 and they give you an answer, and you're</p> <p>14 telling me that you don't look at anything</p> <p>15 else but the answer they give? Is that it?</p> <p>16 A. Yes, sir. That's what I'm saying.</p> <p>17 Q. Well, okay, that's fine. But you're saying</p> <p>18 it's not prohibited for other people to look</p> <p>19 at other things, the stuff they have before</p> <p>20 them?</p> <p>21 A. No, sir. You can't help what other people do,</p> <p>22 no, sir.</p> <p>23 Q. It's not prohibited and you don't know, do</p>	<p>1 you telling me that supervisor is not going to</p> <p>2 take into consideration that maybe in that</p> <p>3 interview all the factors available to that</p> <p>4 person to give that person a score based on</p> <p>5 the notes made to the questions and looking at</p> <p>6 everything? Are you telling me that all they</p> <p>7 do is just listen to the person and give the</p> <p>8 score based on the answers in the interview?</p> <p>9 A. Sir, if you'll look at the Job Evaluation</p> <p>10 Committee minutes and see how many people go</p> <p>11 through that at -- getting to be able to use a</p> <p>12 substitution of education -- of experience for</p> <p>13 education, you'll see how many times that</p> <p>14 happens within the Department of Mental</p> <p>15 Health. It happens --</p> <p>16 Q. I'm not asking you that, though. That has</p> <p>17 nothing to do with what I'm asking.</p> <p>18 A. I'm saying that it's not right if somebody</p> <p>19 does that. I'm saying they should grade that</p> <p>20 person --</p> <p>21 Q. Is that written somewhere?</p> <p>22 A. No, sir, it's not.</p> <p>23 Q. Now, let me ask you this. Once a person gets</p>



Page 94	Page 96
<p>1 to the JEC, okay, and substitution is being</p> <p>2 used, right? Let's assume that. Okay?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Substitution has to be agreed to, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And the JEC makes what?</p> <p>7 A. The final decision.</p> <p>8 Q. Makes a recommendation, don't they, to the</p> <p>9 Commissioner? Isn't that right?</p> <p>10 A. They approve whether the person, yes --</p> <p>11 Q. The JEC makes a recommendation to the</p> <p>12 Commissioner. The Commissioner makes the</p> <p>13 final decision; isn't that right?</p> <p>14 A. Yes.</p> <p>15 Q. So the Commissioner -- do you know what the</p> <p>16 statute says the Commissioner has the power to</p> <p>17 do? Do you know that the statute in the state</p> <p>18 of Alabama says the Commissioner has the</p> <p>19 power --</p> <p>20 A. The appointing authority at the facility, the</p> <p>21 Commissioner can approve or disapprove</p> <p>22 anything he'd like to do.</p> <p>23 Q. So the Commissioner makes the final decision,</p>	<p>1 JEC? I mean, you know, why would you do</p> <p>2 that? The reason why the JEC votes on that is</p> <p>3 because of the substitution clause, if you've</p> <p>4 read the minutes.</p> <p>5 Q. I've read them, and there are occasions where</p> <p>6 two people for the same job, one of which has</p> <p>7 the identified qualifications, the other</p> <p>8 person needs substitution, and the JEC looks</p> <p>9 at them, discusses them and makes a decision</p> <p>10 about which one to recommend. You've never</p> <p>11 seen that?</p> <p>12 MR. MOZINGO: I'm going to object to</p> <p>13 the extent you're testifying to</p> <p>14 facts not in evidence.</p> <p>15 Q. You're saying you don't know of that?</p> <p>16 A. Sir, I don't recall it.</p> <p>17 Q. Then once the JEC makes the decision, it</p> <p>18 transmits that decision to the Commissioner,</p> <p>19 right?</p> <p>20 A. He signs off.</p> <p>21 Q. And the Commissioner can ask questions, can do</p> <p>22 whatever the Commissioner wants to do, can't</p> <p>23 he?</p>
Page 95	Page 97
<p>1 right?</p> <p>2 A. Yes, sir. And I've never seen him turn one</p> <p>3 down that the JEC sent to him.</p> <p>4 Q. Well, great. Now, let me ask you this. The</p> <p>5 JEC -- In looking at these minutes, I've also</p> <p>6 seen where the JEC has taken into</p> <p>7 consideration two different individuals, one</p> <p>8 of whom seeks substitution and the other of</p> <p>9 whom does not need substitution, and the JEC</p> <p>10 makes various determinations based on various</p> <p>11 differentials between the individuals. Isn't</p> <p>12 that right? Two individuals. One needs</p> <p>13 substitution and the other one does not.</p> <p>14 A. What does the other one need? Why is the</p> <p>15 other one at the JEC if he doesn't need</p> <p>16 substitution?</p> <p>17 Q. Have you ever seen minutes where that type of</p> <p>18 thing has occurred?</p> <p>19 A. I don't recall seeing them. I don't recall</p> <p>20 seeing somebody going before the JEC that</p> <p>21 didn't need a substitution. I mean, why would</p> <p>22 you take them to -- if they're loaded down</p> <p>23 with education, why would they go before the</p>	<p>1 A. Yes, sir.</p> <p>2 Q. If it's a job that's really important to the</p> <p>3 Commissioner, he might take more time with</p> <p>4 it. He might ask more questions about it.</p> <p>5 Isn't that right?</p> <p>6 A. True.</p> <p>7 Q. Now, isn't it true that the Commissioner can</p> <p>8 determine that he wants his qualifications to</p> <p>9 begin to go up? He wants to require higher</p> <p>10 qualifications of people over a course of</p> <p>11 time.</p> <p>12 A. Yes, sir.</p> <p>13 Q. How would a Commissioner implement such a</p> <p>14 desire, such a -- requiring the qualifications</p> <p>15 to rise over a period of time and thereby,</p> <p>16 let's say, in the Commissioner's opinion</p> <p>17 improve the quality of the work force over a</p> <p>18 period of time?</p> <p>19 A. I would think he would convey it to the</p> <p>20 Personnel Department.</p> <p>21 Q. Okay. So that if the Commissioner -- let's</p> <p>22 assume that the Commissioner has a desire to</p> <p>23 get higher qualified people from an academic</p>

Deposition of Joan Owens

June 2, 2008

Page 98	Page 100
<p>1 standpoint. Okay? Let's just assume that.</p> <p>2 A. Yes, sir.</p> <p>3 Q. The Commissioner has the right to do that,</p> <p>4 doesn't he?</p> <p>5 A. Yes, he does.</p> <p>6 Q. He doesn't have to get anybody's permission to</p> <p>7 do that, does he?</p> <p>8 A. No.</p> <p>9 Q. Assume that the Commissioner approved --</p> <p>10 directly approved the specification for the</p> <p>11 job of Departmental Assistant Personnel</p> <p>12 Manager. Is there anything about that that</p> <p>13 violates any rule, regulation, law or other</p> <p>14 authority that you're aware of?</p> <p>15 MR. MOZINGO: I'm going to object to</p> <p>16 the form to the extent you're</p> <p>17 asking her a legal question.</p> <p>18 Certainly, the Commissioner</p> <p>19 cannot be arbitrary or</p> <p>20 capricious.</p> <p>21 MR. NIX: That's fine. And I don't</p> <p>22 mind you making legal arguments</p> <p>23 either. But, really, I'm asking</p>	<p>1 hypothetical, but I want you to take a look at</p> <p>2 Defendant's Exhibit 2.</p> <p>3 (Defendant's Exhibit 2 was marked for</p> <p>4 identification</p> <p>5 Q. This is a three-page document, but it really</p> <p>6 should be two pages. I'll tell you what it is</p> <p>7 for the record right now. The first page is</p> <p>8 the first page of the first announcement for</p> <p>9 the Departmental Assistant Personnel Manager</p> <p>10 position which is dated September 15, 2005,</p> <p>11 and which was sent that day. It gives a</p> <p>12 response period deadline of September 30th,</p> <p>13 2005. Then the second -- or the third page --</p> <p>14 that's on the second page, the response</p> <p>15 deadline, September 30, '05.</p> <p>16 And then the third page is the second</p> <p>17 page of the second announcement that went out,</p> <p>18 okay, which I think went out in either late --</p> <p>19 well, early October probably is when it went</p> <p>20 out, and then it was a good bit more time for</p> <p>21 responding, to October 28, 2005. Okay?</p> <p>22 So I want to show you Exhibit 2 and just</p> <p>23 ask you to take a look at it and tell me if</p>
Page 99	Page 101
<p>1 her from the standpoint of --</p> <p>2 Q. Just your knowledge of the practical aspects</p> <p>3 of the way things work over there. Let's</p> <p>4 assume the Commissioner says, you know, I</p> <p>5 think we need X type of employee, and I think</p> <p>6 for that employee, we need to have -- we need</p> <p>7 to require a bachelor's degree and we don't</p> <p>8 need to allow substitution.</p> <p>9 Now, let's assume that the Commissioner</p> <p>10 just makes that decision by himself, decides</p> <p>11 to do it and does it, has someone write up the</p> <p>12 spec and it's put out, announced. That is</p> <p>13 acceptable, isn't it?</p> <p>14 A. The Commissioner can do anything he wants to</p> <p>15 do.</p> <p>16 MR. NIX: Do you want to take a</p> <p>17 break for lunch?</p> <p>18 MR. MOZINGO: Yeah.</p> <p>19 (Lunch recess was taken.)</p> <p>20 Q. Ms. Owens, let's see. I don't remember where</p> <p>21 we ended up, frankly. We were talking about a</p> <p>22 hypothetical situation actually. Of course, a</p> <p>23 lot of information came in through that</p>	<p>1 I'm correct in my explanation of what Exhibit</p> <p>2 2 is.</p> <p>3 MR. MOZINGO: I want you to look at</p> <p>4 it, too, but I just want to</p> <p>5 look ... take your time.</p> <p>6 A. It looks like the original.</p> <p>7 Q. And I'll represent to you to the best of my</p> <p>8 knowledge, that's exactly what it is. It's</p> <p>9 exactly what I said it was.</p> <p>10 The September 15, 2005, date on there is</p> <p>11 the date of the first announcement; is that</p> <p>12 correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And then there's a --</p> <p>15 MR. MOZINGO: You need to look on</p> <p>16 that page.</p> <p>17 Q. Above the date is a number. It says number,</p> <p>18 underlined. What does that say?</p> <p>19 A. That's the announcement number. All</p> <p>20 announcements have numbers.</p> <p>21 Q. Okay.</p> <p>22 A. It was probably the 27th announcement for the</p> <p>23 Central Office for 2005.</p>

Deposition of Joan Owens

June 2, 2008

Page 102	Page 104
1 Q. It says 05-27.	1 A. Yes.
2 A. Yes, sir.	2 Q. -- first of all, that was done?
3 Q. Do you know if that's the way those numbers	3 A. Yes.
4 are determined?	4 Q. Did you agree with that?
5 A. Generally, yes, sir.	5 A. No, I don't.
6 Q. So it doesn't mean that that announcement was	6 Q. When you heard about the fact that there was
7 initially drawn on May 27, 2005, right?	7 going to be that change in the substitution
8 A. No, sir.	8 rule so that from the point in time when that
9 Q. And it is for the job we're here about today?	9 began, when that rule was changed and
10 A. Yes, sir.	10 initiated and effective, there would be two
11 Q. Departmental Assistant Personnel Manager?	11 years of experience required for the
12 A. Yes, sir.	12 requirement of one year of college, when you
13 Q. And then on the second page, the bottom of the	13 first heard that, did you do anything, say
14 second page which is part of this same	14 anything, attempt to get it changed? What did
15 announcement, it's just the second page and	15 you do?
16 the last page of that same announcement sent	16 A. I did nothing.
17 on the 15th of September 2005, the second page	17 Q. Did you say anything to anyone?
18 gives a deadline by which applications must	18 A. I probably did, but I didn't say it to -- I
19 come in. The second page does.	19 just stated my feelings. I didn't say
20 Did you know it was announced twice?	20 anything to get it changed.
21 A. Yes, sir.	21 Q. Do you recall who you talked to?
22 Q. What was the first deadline for applications?	22 A. No, sir, I don't. Probably within the office.
23 A. September 30th.	23 Q. Did you talk with Lynn Hubbard about it?
Page 103	Page 105
1 Q. Okay. Now, you know it was announced twice?	1 A. I probably did.
2 A. Yes, sir.	2 Q. Did you talk with Marilyn Benson about it?
3 Q. Look at the third page, which is the second	3 A. I may have. I don't know. I probably did,
4 page of the second announcement. I frankly	4 because I just really did not feel that it
5 don't think that the first page of the second	5 should be done that way.
6 announcement is much different except that it	6 Q. Why not?
7 may say re-announcement, you know.	7 A. Well, I've worked in a facility before, and it
8 A. Yes, sir.	8 is hard to get people for positions in
9 Q. But anyway, what's the date for response on	9 facilities. And I think that requiring two
10 the second announcement of that same job,	10 years for one year is too much.
11 Departmental --	11 Also, if you will go online and look at
12 A. October 28, 2005.	12 other states, I don't know of another state
13 Q. That's Departmental Assistant Personnel	13 that requires two-for-one. We're the only --
14 Manager, right?	14 even with the State of Alabama merit system,
15 A. Yes, sir.	15 if you'll look at their announcements, I've
16 Q. Now, prior to this time, had there been a	16 not seen one of their announcements that asks
17 discussion or a change or any kind of	17 for two years experience for one year of
18 provision made that at some point in time,	18 education. We are the only people I know of
19 substitution would not be one year of	19 that does that.
20 experience for one year of education, but two	20 Q. Does the regular merit system allow
21 years of experience for one year of education?	21 substitution at all?
22 A. It was done prior to this.	22 A. Yes, they do.
23 Q. You're saying, yes --	23 Q. Does the regular merit system in the State of



Deposition of Joan Owens

June 2, 2008

Page 106	Page 108
<p>1 Alabama allow substitution for all jobs?</p> <p>2 A. No, they don't.</p> <p>3 Q. Do you know where they draw the line?</p> <p>4 A. No, sir, I don't.</p> <p>5 Q. Do you know whether the regular merit system</p> <p>6 in the State of Alabama allows for</p> <p>7 substitution in a management position?</p> <p>8 A. No, sir, I'm -- just to be able to bring one</p> <p>9 up, no, sir, I can't do that. I'm sure you</p> <p>10 can get -- go online and see the ones that</p> <p>11 they do.</p> <p>12 Q. So you heard about the two years of experience</p> <p>13 for one year of education substitution --</p> <p>14 A. Yes, sir. We were notified about that.</p> <p>15 Q. All right.</p> <p>16 A. Because we have to grade applications, so we</p> <p>17 have to be told.</p> <p>18 Q. All right. And you're telling me that you did</p> <p>19 not attempt to talk to anyone to get that</p> <p>20 changed or to affect it in any way?</p> <p>21 A. No, sir, I did not.</p> <p>22 Q. Now, Ms. Owens, we just talked about the merit</p> <p>23 system and the other system, the exempt</p>	<p>1 test in the exempt system?</p> <p>2 A. No, sir. That happened before I ever came to</p> <p>3 work with Mental Health. I have no idea.</p> <p>4 Q. Do you know of anyone at the Department of</p> <p>5 Mental Health that did raise a cue and cry</p> <p>6 about the change from a one-to-one</p> <p>7 substitution rule to a two-to-one substitution</p> <p>8 rule?</p> <p>9 MR. MOZINGO: Object to the form.</p> <p>10 You can go ahead and answer.</p> <p>11 A. Do I know of anyone?</p> <p>12 Q. Yes.</p> <p>13 A. The only person that I know of is Lynn and I</p> <p>14 both did not agree with it.</p> <p>15 Q. You and Lynn Hubbard did not?</p> <p>16 A. Yes. But we're the only people that really</p> <p>17 work with it besides -- I mean, Personnel,</p> <p>18 we're the only ones that work with it --</p> <p>19 Q. Okay.</p> <p>20 A. -- in Central Office. She grades</p> <p>21 applications. I do. And at that time,</p> <p>22 Ms. Benson graded applications.</p> <p>23 Q. Tell me again. I'm sorry. I apologize to</p>
Page 107	Page 109
<p>1 system, I guess, correct?</p> <p>2 A. Yes, sir. That's what I work mostly with is</p> <p>3 exempt.</p> <p>4 Q. What's the difference between the merit system</p> <p>5 and the exempt system?</p> <p>6 A. Do you want to know the quickest way?</p> <p>7 Q. Sure.</p> <p>8 A. You take a test for a merit job, and you're</p> <p>9 not tested for an exempt. That's not exactly</p> <p>10 every bit of it, but that's the best way to</p> <p>11 put it.</p> <p>12 Q. What kind of test do you take for a merit job?</p> <p>13 A. It's a test designed for that particular job.</p> <p>14 And since I don't work in State Personnel, I</p> <p>15 can't tell you all about that because I don't</p> <p>16 work with that.</p> <p>17 Q. I've got you. But you know that in the merit</p> <p>18 system, they take some type of test --</p> <p>19 A. Yes, sir.</p> <p>20 Q. -- for each job; whereas, in the exempt</p> <p>21 system, you do not?</p> <p>22 A. We don't test.</p> <p>23 Q. Do you know who decided that there would be no</p>	<p>1 you, but I'm not awake yet from lunch. What</p> <p>2 did you say the reason was that you disagree</p> <p>3 with it? You said something about working at</p> <p>4 facilities or something.</p> <p>5 A. It's my understanding one of the reasons we</p> <p>6 have exempt positions is to be able to fill</p> <p>7 those positions as quickly as we possibly can</p> <p>8 without --</p> <p>9 I worked in facilities before I came to</p> <p>10 work with Central Office, and a lot of times</p> <p>11 in the facilities, it's hard to get people for</p> <p>12 positions, hard to get qualified people for</p> <p>13 positions. And so it would be a lot easier,</p> <p>14 and I did not ever have a problem when it was</p> <p>15 one-for-one.</p> <p>16 Just about -- when people have to do</p> <p>17 two-for-one, we just discovered a while ago</p> <p>18 when you were asking me, you've got to have 12</p> <p>19 years right off the bat for a master's. And</p> <p>20 then if they ask for experience on top of</p> <p>21 that, you know, you're -- it makes it a lot</p> <p>22 harder to recruit and bring people in that has</p> <p>23 to have that much experience.</p>

Deposition of Joan Owens

June 2, 2008

Page 110	Page 112
<p>1 Q. That has to have that much experience or that</p> <p>2 has to have that kind of education?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What the two-for-one experience to education</p> <p>5 ratio and substitution does is to put a higher</p> <p>6 value on education than on experience, doesn't</p> <p>7 it?</p> <p>8 A. I would say that, but it's not my job to value</p> <p>9 education. That's not what I'm employed to do</p> <p>10 is value somebody's diploma. It's to get the</p> <p>11 best candidate.</p> <p>12 Q. But you would agree with me that two-for-one</p> <p>13 exempt --</p> <p>14 A. Two-for-one is too much. One-for-one would be</p> <p>15 right.</p> <p>16 Q. Okay. Two-for-one, it raises the importance</p> <p>17 of education and it diminishes the importance</p> <p>18 of experience. Would that be true?</p> <p>19 A. That would be true.</p> <p>20 Q. Now, you indicated just now that neither you</p> <p>21 nor Lynn Hubbard agreed with this</p> <p>22 two-for-one. And I think what you said was,</p> <p>23 it just made it too hard to get people --</p>	<p>1 jobs?</p> <p>2 A. Yes, I believe. And I think the people that</p> <p>3 worked for Mental Health back when that was</p> <p>4 done -- that was before my day -- worked with</p> <p>5 them. And our people now are working with the</p> <p>6 Segal company to set and look at the ...</p> <p>7 Q. You're not participating in that?</p> <p>8 A. No, sir, I'm not.</p> <p>9 Q. Have you seen the study?</p> <p>10 A. Some of it, not all of it, but parts of it.</p> <p>11 Q. Did you know that a wage and class study had</p> <p>12 been commissioned --</p> <p>13 A. Yes, sir.</p> <p>14 Q. -- when it was commissioned?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Did you meet and speak with any of the people</p> <p>17 from the Segal company?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And that was during the course of their work</p> <p>20 on the wage and class study?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Do you remember about when that would have</p> <p>23 been?</p>
Page 111	Page 113
<p>1 A. You're bringing your applicant pool down when</p> <p>2 you do that.</p> <p>3 Q. Okay. And how is that? How are you bringing</p> <p>4 your applicant pool down?</p> <p>5 A. You're not going to get as many people to</p> <p>6 qualify, meet minimum qualifications.</p> <p>7 Q. How is a minimum qualification established for</p> <p>8 a job?</p> <p>9 A. Well, with the specs that we have, they were</p> <p>10 drawn up back many years ago, I think -- and</p> <p>11 I'm speaking of hearsay now -- by AUM. And</p> <p>12 just recently, we've had a company -- the</p> <p>13 Segal company, I believe it is, go over ours</p> <p>14 to redo them. So we have specifications for</p> <p>15 our jobs.</p> <p>16 Q. You're saying that the company -- for example,</p> <p>17 like AUM, if AUM did --</p> <p>18 A. I believe it was AUM, sir. I don't know for</p> <p>19 sure.</p> <p>20 Q. Whoever did -- the study? Is that what it</p> <p>21 is? Wage and class study?</p> <p>22 A. Yes, sir.</p> <p>23 Q. They would set minimum qualifications for the</p>	<p>1 A. No, sir. It's been within the last year since</p> <p>2 they started doing it. I'm sorry. Again, I</p> <p>3 don't know dates.</p> <p>4 Q. Now, when you met with them --</p> <p>5 A. It was one man.</p> <p>6 Q. Okay. I'm sorry. When you met with him, did</p> <p>7 you meet with him alone or were there other</p> <p>8 people there?</p> <p>9 A. There were other people, other Personnel</p> <p>10 people, because he was talking to us about</p> <p>11 what we did as Personnel people to kind of let</p> <p>12 him -- like you're doing, to find out what we</p> <p>13 do and how we do it, what it takes to do the</p> <p>14 job.</p> <p>15 Q. Okay. Do you recall who was there when you</p> <p>16 met with him?</p> <p>17 A. Lynn was there. Lynn Hubbard was there. I</p> <p>18 think there were representatives from each of</p> <p>19 the facilities that -- there were exempt</p> <p>20 people in the same classification. There was</p> <p>21 a lady from Searcy there. And, again, I'm</p> <p>22 sorry. I can't remember. I'm sorry.</p> <p>23 Q. He was basically meeting with as many folks as</p>

Page 114	Page 116
<p>1 he could that were in Personnel that were in</p> <p>2 the same class basically?</p> <p>3 A. So he'd know what we did.</p> <p>4 Q. Does the job differ from place to place; for</p> <p>5 example, the Central Office does one type of</p> <p>6 thing and the facility's Personnel Specialists</p> <p>7 do other types of things?</p> <p>8 A. It's a lot -- since I've worked in both</p> <p>9 places, yes, sir. It's a lot different in a</p> <p>10 facility than it is at Central Office. At</p> <p>11 Central Office, you more or less do just a few</p> <p>12 things. And in a facility, you have to do</p> <p>13 almost everything, I mean, because you have a</p> <p>14 lot going on in a facility. You don't have a</p> <p>15 lot of -- as much personnel, and you can't be</p> <p>16 as precise.</p> <p>17 Q. You were in the Central Office, weren't you,</p> <p>18 when the various facilities that were closed</p> <p>19 were closed down?</p> <p>20 A. Well, yes, sir, but they consolidated when I</p> <p>21 was at Greil Hospital, so I was brought into</p> <p>22 Central Office. And because Greil and</p> <p>23 Tarwater were small facilities, well -- Lynn</p>	<p>1 Q. Defendant's Exhibit 3, the cover page states,</p> <p>2 State of Alabama Department of Mental Health</p> <p>3 and Mental Retardation Proposal to Conduct a</p> <p>4 Wage and Classification Study, and it's dated</p> <p>5 June 16, 2006, from the Segal group. Just ask</p> <p>6 you to take a quick look at it. It only has,</p> <p>7 I think, three of the pages. It's a rather</p> <p>8 thick document. I don't know if you've seen</p> <p>9 the whole document or not.</p> <p>10 A. No, sir, I haven't.</p> <p>11 Q. Have you seen any part of that document, the</p> <p>12 cover page or anything?</p> <p>13 A. No, sir.</p> <p>14 Q. Have not. Did you know that in June '06, the</p> <p>15 Segal company executed a contract to conduct a</p> <p>16 study, the wage and class study, and began</p> <p>17 conducting that study?</p> <p>18 A. Yes, sir. I knew they were conducting a</p> <p>19 study.</p> <p>20 Q. Okay. Did you know the purpose of the study?</p> <p>21 A. To redo our specs because they had gotten very</p> <p>22 old. They had been done a number of years ago</p> <p>23 and they were going to redo them.</p>
Page 115	Page 117
<p>1 and I took turns going to Greil and Tarwater,</p> <p>2 and so then we just kind of nailed it down.</p> <p>3 She would go to Greil and I went to Tarwater.</p> <p>4 And then when Tarwater closed, I was</p> <p>5 there and helped close the facility. And then</p> <p>6 when Brewer closed, well, I was put on a</p> <p>7 special task force to go down and close</p> <p>8 Brewer. And I also helped downsize Brewer</p> <p>9 when they had to move. I was on a task force</p> <p>10 to do that, also.</p> <p>11 Q. But there was a time, wasn't there, when the</p> <p>12 Department of Mental Health and Mental</p> <p>13 Retardation closed a number of its facilities?</p> <p>14 A. Yes, sir, and I was at Tarwater when that</p> <p>15 happened. But, now, I had to work at Central</p> <p>16 Office and do duties there and go to Tarwater</p> <p>17 and be their personnel director, too.</p> <p>18 (Defendant's Exhibit 3 was marked for</p> <p>19 identification.)</p> <p>20 Q. Let me show you what I've marked as</p> <p>21 Defendant's Exhibit 3.</p> <p>22 MR. NIX: And I offer 2 by the way,</p> <p>23 Defendant's 2.</p>	<p>1 Q. Okay.</p> <p>2 MR. MOZINGO: Does she need to refer</p> <p>3 to this?</p> <p>4 MR. NIX: No, not really. I just</p> <p>5 wanted to know if she'd seen it.</p> <p>6 Q. And the date is June 16, '06; is that what it</p> <p>7 says?</p> <p>8 A. I have not worked with them.</p> <p>9 MR. MOZINGO: The cover page.</p> <p>10 A. I just know that they were employed to do</p> <p>11 this, so --</p> <p>12 Q. I just did not know what -- you know, whether</p> <p>13 you had even seen that. That's all I wanted</p> <p>14 to know.</p> <p>15 A. This page right here, I don't believe I've</p> <p>16 ever seen this page here. I just know that</p> <p>17 we're doing it.</p> <p>18 (Defendant's Exhibit 4 was marked for</p> <p>19 identification.)</p> <p>20 Q. Let me let you look at Defendant's Exhibit 4,</p> <p>21 which is a document from the Segal company</p> <p>22 entitled Alabama Department of Mental Health</p> <p>23 and Mental Retardation Job Classification</p>

Page 118	Page 120
<p>1 Structure, Final Report dated November 30, 2 2007. And by the way, that's a partial -- 3 very few pages of that report. Okay? It's a 4 very thick report, but I just pulled out -- 5 A. Sir, I've seen pieces of this, but I haven't 6 just sat down and gone over it and read it. 7 Q. What pieces have you seen? 8 A. I don't know. Just different pieces of it 9 that Marilyn -- because Marilyn has been the 10 one that's worked with this, not me. 11 Q. Okay. 12 A. And things that she has shared, so I don't 13 know what -- I'll be very honest with you. I 14 don't know what I've seen and what I haven't 15 seen right now at this point in time, but, 16 yes, sir, I've seen different parts of it. 17 Q. Flip another page. What is that part? 18 A. Human Resources. The Human Resources family 19 has both support, professional, and managerial 20 job titles, and it goes down and does the 21 proposed titles, the current titles, job 22 summaries, and distinguishing characteristics. 23 Q. Do you see any differences in that listing as</p>	<p>1 Q. I'm not trying to tie you down. I'm just 2 curious what you say. 3 A. It says: Performs high-level technical or 4 professional-level human resource functions, 5 coordinates employment selection, facilitates 6 disciplinary process, consults with management 7 and staff on HR issues, conducts new employee 8 orientation sessions. That's for the 9 Personnel Specialist II and III. Now, the II 10 is included with the III there, and usually 11 there's ... 12 Q. And that would be different, wouldn't it? 13 A. Yes, sir, it would. 14 Q. And is the -- can you look at that and tell 15 whether substitution is allowed for those 16 jobs? 17 A. No, sir, I don't see the clause. 18 Q. Don't see anything. Okay. 19 Turn to the next page. Those pages are a 20 long way apart in that book. Okay? 21 A. Yes, sir. 22 Q. You can tell by looking at the Bates numbers 23 on the pages that we've done.</p>
Page 119	Page 121
<p>1 opposed to the current or the former, if there 2 are former, job titles or listings? 3 MR. MOZINGO: Wait a minute. Let me 4 make sure I understand the 5 question. Are you asking her 6 are the job titles different on 7 this Defendant's Exhibit 4 8 compared to what they were prior 9 to Defendant's Exhibit 4 or 10 today? I'm not really sure. 11 Q. I'm sorry. It was a bad question. I'm really 12 just asking something real general. Really, 13 I'm just asking at first blush, do you see 14 anything different on that page for the 15 Central Office Human Resources positions that 16 are different or show differences from the 17 current or the previous Human Resources 18 positions? I don't know to the extent what's 19 been implemented yet, but -- 20 MR. MOZINGO: I'll object to the 21 form to the extent it's a very 22 broad question. It might be 23 hard for her to answer.</p>	<p>1 What that is -- it's one page of Appendix 2 B, and it's called Recommended Minimum 3 Qualifications by Job Family. And what is the 4 job family listed? 5 A. It would be Human Resources. 6 Q. Okay. Look at the Personnel Specialist job. 7 A. Personnel Specialist II and III. Associate's 8 degree from an accredited college or 9 university in business or related field and 10 two years of increasingly responsible 11 technical human resource experience. 12 Applicants may substitute additional 13 education for the required experience or 14 experience for the required education at the 15 rate of two years of specific job-related 16 experience for each year 30 semester credits 17 of formal education. 18 Q. What's the next classification below? 19 A. HR Personnel Manager I, II, and III. 20 Q. Is substitution allowed for any of those 21 positions? 22 A. It doesn't look like it is. 23 Q. Okay. What's the next job down?</p>



Deposition of Joan Owens

June 2, 2008

Page 122	Page 124
<p>1 A. Departmental Assistant Personnel Manager.</p> <p>2 Q. Who has that job currently?</p> <p>3 A. Ms. Benson.</p> <p>4 Q. And is this the job that we're talking about?</p> <p>5 A. Yes, it is.</p> <p>6 Q. This is the job that we're here about today,</p> <p>7 isn't it?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Is substitution allowed in that qualification?</p> <p>10 A. No, it's not.</p> <p>11 Q. Now, did you know that? Did you know that</p> <p>12 that was what Segal came up with?</p> <p>13 A. No, sir, I did not. Isn't this, though, after</p> <p>14 the fact?</p> <p>15 Q. After what fact?</p> <p>16 A. After this job has been announced and --</p> <p>17 Q. I think it was after --</p> <p>18 A. -- after Ms. Benson went into it.</p> <p>19 Q. -- the job had been filled, frankly.</p> <p>20 A. That's true.</p> <p>21 Q. I'm sure that it was. 6-20, I think, or</p> <p>22 somewhere in that range of '06 was when the</p> <p>23 commission -- when it was commissioned, the</p>	<p>1 have occurred that you disagree with at the</p> <p>2 Department of Mental Health, and let's say</p> <p>3 specifically in the Human Resources part of</p> <p>4 Mental Health, okay --</p> <p>5 A. Yes, sir.</p> <p>6 Q. -- at least that we've uncovered so far.</p> <p>7 Number one would be the change in the rule of</p> <p>8 substitution from one-to-one to two-to-one.</p> <p>9 A. Yes, sir.</p> <p>10 Q. You disagree with that. And the other would</p> <p>11 be the disallowance of substitution for the</p> <p>12 jobs -- let's say the disallowance of</p> <p>13 substitution for the job of Departmental</p> <p>14 Personnel -- Departmental Assistant Personnel</p> <p>15 Manager. Why I can't do that I don't know,</p> <p>16 but I can't. Departmental Assistant Personnel</p> <p>17 Manager. All right. And you disagree with</p> <p>18 that as well?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Are you aware of any thought process or</p> <p>21 movement in the higher echelons of Mental</p> <p>22 Health that Mental Health wanted to improve</p> <p>23 the quality of its job -- the people in its</p>
Page 123	Page 125
<p>1 study was commissioned, so --</p> <p>2 A. And up here, it says that they're recommending</p> <p>3 two years for one year. Well, the man that</p> <p>4 interviewed us for our job in Human Resources</p> <p>5 said it was the first time he had ever seen</p> <p>6 that, too. So it looks like to me they're</p> <p>7 going along with what Mental Health has</p> <p>8 already done.</p> <p>9 Q. All right. You're a quick study. But you</p> <p>10 would agree with me, would you not, that</p> <p>11 substitution is not allowed for any of the job</p> <p>12 categories in Human Resources below the</p> <p>13 Personnel Specialist II and III in this study</p> <p>14 which is marked --</p> <p>15 A. I don't agree for not allowing education.</p> <p>16 Q. I'm sorry?</p> <p>17 A. I don't agree with it. No, sir, I do not</p> <p>18 agree.</p> <p>19 Q. I'm just asking if you agree that that's what</p> <p>20 it says.</p> <p>21 A. I agree that that's what it says.</p> <p>22 MR. NIX: I introduce 3 and 4.</p> <p>23 Q. Now, Ms. Owens, it appears that two things</p>	<p>1 jobs?</p> <p>2 A. No, sir, I'm unaware of that.</p> <p>3 Q. And that -- were you aware that -- if that's</p> <p>4 correct, if they did want to improve the</p> <p>5 quality of the people in their jobs, that</p> <p>6 their belief was --</p> <p>7 And I'm speaking of Commissioner Houston,</p> <p>8 Otha Dillihay, Henry Ervin, the people that</p> <p>9 matter in those decisions. Okay?</p> <p>10 -- that their belief was that education</p> <p>11 is more beneficial than experience?</p> <p>12 A. If that's their belief, why is that the only</p> <p>13 job that they've done that to? There's been</p> <p>14 many jobs since then that they've used the</p> <p>15 clause in that we've hired, jobs that pays</p> <p>16 more than this job. But this is the only job</p> <p>17 that this has happened in.</p> <p>18 Q. Let me ask you this.</p> <p>19 A. And it was to keep me, deny me from applying.</p> <p>20 Q. I appreciate your telling me that. On these</p> <p>21 jobs that you're discussing with me where they</p> <p>22 were as high or higher than the one we're</p> <p>23 dealing with here, okay, where they have</p>

Deposition of Joan Owens

June 2, 2008

Page 126	Page 128
<p>1 allowed for substitution, were any of those</p> <p>2 new -- newly-created specifications?</p> <p>3 A. I do not know what all they were, but it is</p> <p>4 the only job that has had -- that the clause</p> <p>5 has been taken out of that I know of, the only</p> <p>6 one.</p> <p>7 Q. When you say the clause was taken out of,</p> <p>8 wasn't this a new job? I mean, this was an</p> <p>9 entirely new job, wasn't it?</p> <p>10 A. No, I think Mr. Ervin held this job at one</p> <p>11 time many years ago. I think there used to be</p> <p>12 an Assistant Personnel Director job. You may</p> <p>13 ask him. I don't know. I don't know that for</p> <p>14 a fact, but I know he talked with me one time</p> <p>15 and he was saying that he was a Mr. Reeves'</p> <p>16 assistant I believe it was.</p> <p>17 Q. So you're saying this is an old job, not a new</p> <p>18 job?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you disagree, then, with Commissioner</p> <p>21 Houston if he says it's a new job, with Otha</p> <p>22 Dillahay if he says it's a new job, with Henry</p> <p>23 Ervin if he says it was a new job and it</p>	<p>1 since I've been there.</p> <p>2 Q. Have you ever seen a specification for</p> <p>3 Departmental Assistant Personnel Manager --</p> <p>4 A. No, sir.</p> <p>5 Q. -- other than the one that was created in</p> <p>6 2005?</p> <p>7 A. That's the first one I've seen.</p> <p>8 Q. Okay. Now, you do not attend, do you, the JEC</p> <p>9 or Job Evaluation Committee --</p> <p>10 A. No, sir, I don't.</p> <p>11 Q. -- meetings? Have you ever attended any of</p> <p>12 them?</p> <p>13 A. Yes, sir, and I took the minutes for Marilyn</p> <p>14 one time.</p> <p>15 Q. You took the minutes one time, and I think</p> <p>16 Ms. Hubbard has taken the minutes some -- a</p> <p>17 couple of times.</p> <p>18 A. I've only done it once.</p> <p>19 Q. But on a normal basis, you do not attend those</p> <p>20 meetings, correct?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you get copies of the minutes?</p> <p>23 A. Supposed to.</p>
Page 127	Page 129
<p>1 needed a new specification?</p> <p>2 A. I disagree that -- this is the only job that's</p> <p>3 been announced that the clause has been taken</p> <p>4 out of.</p> <p>5 Q. What you're saying is, it's your position that</p> <p>6 this is the only job that's been filled at</p> <p>7 this level where substitution has not been</p> <p>8 allowed?</p> <p>9 A. That's right, and it's the only Personnel</p> <p>10 position. We were looking at those Human</p> <p>11 Resource positions. Every one of them allows</p> <p>12 for the substitution clause except this one.</p> <p>13 Q. Which Human Resources positions?</p> <p>14 A. Well, Henry's job allowed for it. The</p> <p>15 Personnel Manager job at Bryce Hospital allows</p> <p>16 for it. And it wasn't very many months before</p> <p>17 this job was announced that they allowed</p> <p>18 substitution for the Bryce Hospital Personnel</p> <p>19 Director.</p> <p>20 Q. Well, let me ask you this. The jobs you just</p> <p>21 mentioned to me, were those old jobs or were</p> <p>22 those newly-created specifications?</p> <p>23 A. As far as I know, they've been in effect ever</p>	<p>1 Q. Do you remember any minutes of the Job</p> <p>2 Evaluation Committee where they discussed</p> <p>3 substitution, the topic of substitution?</p> <p>4 A. I have read some of the minutes that they have</p> <p>5 discussed it. Mostly Mr. Dillihay and Henry</p> <p>6 discussed it.</p> <p>7 Q. Do you remember anything that they said when</p> <p>8 they discussed it in those meetings from your</p> <p>9 reading of the minutes?</p> <p>10 A. I know that Mr. Dillihay was the one that</p> <p>11 instigated the two-for-one, if you have read</p> <p>12 them. And, also, I do know that they talked</p> <p>13 about taking it out of some of the</p> <p>14 higher-paying jobs. But that was done only</p> <p>15 after this job came out 9-15 that Henry tried</p> <p>16 to get it taken out of the administrative</p> <p>17 series, but they never did it, so that was a</p> <p>18 smoke screen.</p> <p>19 Q. Do you know why they didn't change any</p> <p>20 existing specifications?</p> <p>21 A. I have no idea.</p> <p>22 Q. You haven't seen any minutes that give you any</p> <p>23 idea as to why they waited to change existing</p>



Page 130	Page 132
<p>1 specifications?</p> <p>2 A. No. I read some minutes that they voted to</p> <p>3 take it out of the Administrator V specs, but</p> <p>4 they never did it.</p> <p>5 Q. And you don't know why?</p> <p>6 A. No, sir, I do not know why.</p> <p>7 Q. Do you think they just were totally arbitrary</p> <p>8 in making that decision, or do you have</p> <p>9 evidence that they were just totally arbitrary</p> <p>10 in making the decision?</p> <p>11 A. I don't have any evidence. I know that it was</p> <p>12 never done.</p> <p>13 Q. Have you ever spoken with Commissioner Houston</p> <p>14 about any of this?</p> <p>15 A. No, sir, I have never talked with Commissioner</p> <p>16 Houston.</p> <p>17 Q. Have you spoken with -- Ever?</p> <p>18 A. Never. I mean, hello, how are you. I</p> <p>19 congratulated him when he became the</p> <p>20 Commissioner. I am the chairman of the</p> <p>21 Americans with Disabilities Committee, and he</p> <p>22 was on there at one time. But as far as</p> <p>23 talking to him about this, no, I have not.</p>	<p>1 stays. I said, I want you to change this.</p> <p>2 And she told me later, she said, I hope you</p> <p>3 remember what I said, Joan. And I said, I</p> <p>4 do.</p> <p>5 She looked at it and she said, I can't</p> <p>6 and I won't. And I said, why? And she said,</p> <p>7 because Mr. Dillihay and Henry wrote these</p> <p>8 specs and I cannot change them. She said,</p> <p>9 we're going to start leaving the clause out of</p> <p>10 all the higher-paying positions.</p> <p>11 And I said, well, June, you're telling me</p> <p>12 that I can be the Personnel Director at one of</p> <p>13 the largest facilities we have, but I can't</p> <p>14 even be Henry's assistant? And she said, I'm</p> <p>15 telling you that Mr. Dillihay and Henry wrote</p> <p>16 those specs and I'm not changing them.</p> <p>17 Q. Okay. And she said we're going to start</p> <p>18 taking --</p> <p>19 A. Leaving it out of the higher-paying positions.</p> <p>20 Q. Did she tell you that Commissioner Houston had</p> <p>21 discussed this with Mr. Dillihay and with</p> <p>22 Mr. Ervin and that he was in agreement with it</p> <p>23 and that he approved it?</p>
Page 131	Page 133
<p>1 Q. Have you ever spoken with June Lynn about it?</p> <p>2 A. Yes, I have.</p> <p>3 Q. Tell me about that.</p> <p>4 A. The day on 9-15 -- I guess it was 9-15, the</p> <p>5 first time I saw the announcement, she was</p> <p>6 going by my door. And I held it up and I</p> <p>7 said, I'm going to apply for this. She did</p> <p>8 not miss a beat. She's a friend of mine, but</p> <p>9 she did not miss a beat. She looked at me and</p> <p>10 she said, you can't. I had not even read it.</p> <p>11 And I said, why can't I? She said, the</p> <p>12 clause is not in it. So that tells me she had</p> <p>13 already discussed with somebody whether I had</p> <p>14 enough education to do it or not. I said,</p> <p>15 oh. So she went on by.</p> <p>16 In a few minutes, I got up and I went to</p> <p>17 her office and I said, June, I'd like to speak</p> <p>18 with you about this. I said, and I want to</p> <p>19 talk to you as my associate -- because she was</p> <p>20 in an acting position at that time -- not as</p> <p>21 my friend. And she said -- Courtney was in</p> <p>22 her office -- do you mind if Courtney stays in</p> <p>23 here? I said, no, I don't mind if Courtney</p>	<p>1 A. No, she did not bring Houston into it. She</p> <p>2 talked about Henry and Dillihay.</p> <p>3 Q. If Commissioner Houston felt that the human</p> <p>4 services office alone would be served by</p> <p>5 having higher education people in there and he</p> <p>6 wanted to do that and he approved a spec that</p> <p>7 required that with no substitution, then he</p> <p>8 has every right to do that, doesn't he --</p> <p>9 A. Sir --</p> <p>10 Q. -- if that's his opinion?</p> <p>11 A. He has every right to do anything he wants to,</p> <p>12 but it doesn't mean that it's right to do it,</p> <p>13 that he's not discriminating.</p> <p>14 Q. Well, how --</p> <p>15 A. He can do whatever he wants to, but it don't</p> <p>16 make it right.</p> <p>17 Q. Well, let's talk about that, then. Okay? You</p> <p>18 mentioned a minute ago that June Lynn said to</p> <p>19 you, you can't apply because the clause is not</p> <p>20 in there or something to that effect, and you</p> <p>21 said which tells me she had already talked to</p> <p>22 somebody about the fact that I could not</p> <p>23 apply.</p>

Page 134	Page 136
<p>1 A. Yes, it does.</p> <p>2 Q. I don't know how you arrive at a conclusion</p> <p>3 like that.</p> <p>4 A. Well, how did she know I didn't have an</p> <p>5 education just first pop off the box. Had she</p> <p>6 been and looked at my application? I've never</p> <p>7 discussed my education with her.</p> <p>8 Q. You said you were good friends with her.</p> <p>9 A. Yes, I am, but I've never said --</p> <p>10 Q. She was the Acting --</p> <p>11 A. -- I don't have an education --</p> <p>12 Q. -- Associate --</p> <p>13 MR. MOZINGO: Let him finish asking</p> <p>14 his question before you answer.</p> <p>15 Don't be talking over him.</p> <p>16 Q. She was the Acting Associate Commissioner for</p> <p>17 Administration Personnel at that time, wasn't</p> <p>18 she?</p> <p>19 A. Yes, she was.</p> <p>20 Q. The Commissioner -- Associate Commissioner for</p> <p>21 Administration Personnel is over Personnel,</p> <p>22 correct?</p> <p>23 A. True.</p>	<p>1 Q. Explain that to me.</p> <p>2 A. Well, sir, anybody can do anything they want</p> <p>3 to, but it doesn't make it what needs to be</p> <p>4 done. I mean, I can go jump off of a bridge,</p> <p>5 but it don't mean it's right. It doesn't mean</p> <p>6 that you're doing the right thing.</p> <p>7 Q. So are you telling me that you disagree --</p> <p>8 assuming the Commissioner did what I'm telling</p> <p>9 you he did, okay --</p> <p>10 A. Okay.</p> <p>11 Q. -- that he approved the position, that he had</p> <p>12 spoken with Otha Dillihay and Henry Ervin</p> <p>13 about it, are you saying that he is wrong with</p> <p>14 respect to his belief that in that position,</p> <p>15 education was needed with no substitution?</p> <p>16 A. Did he check to see that all the other</p> <p>17 positions in the Human Resources Department</p> <p>18 did allow for substitution?</p> <p>19 Q. Well, I'm just asking --</p> <p>20 A. Is there evidence that he even saw the</p> <p>21 specification, sir?</p> <p>22 Q. Let me ask you this. Okay? Are you saying</p> <p>23 that the Commissioner is wrong to believe that</p>
Page 135	Page 137
<p>1 Q. And that person takes cognizance of the</p> <p>2 employees in that department, don't they?</p> <p>3 A. I guess.</p> <p>4 Q. And when a job announcement is going to be</p> <p>5 made, don't you think the Associate</p> <p>6 Commissioner knows that a job announcement is</p> <p>7 going to be made before it's made?</p> <p>8 A. Yes.</p> <p>9 Q. And you're saying that y'all have been friends</p> <p>10 forever, and that there's no way she could</p> <p>11 know that you did not have a college degree</p> <p>12 unless, what?</p> <p>13 A. I don't know.</p> <p>14 Q. I mean, are you saying that you never</p> <p>15 discussed with anybody around there that you</p> <p>16 didn't have a college degree?</p> <p>17 A. I didn't discuss -- I don't ever remember</p> <p>18 being in a discussion with Ms. Lynn telling</p> <p>19 her how far I've been in school.</p> <p>20 Q. Okay. Now, you said that if the Commissioner</p> <p>21 wanted to do that, he can do it, but it</p> <p>22 doesn't make it right?</p> <p>23 A. That's right.</p>	<p>1 the position of Departmental Assistant</p> <p>2 Personnel Manager required a bachelor's degree</p> <p>3 with no substitution?</p> <p>4 MR. MOZINGO: Object to the form.</p> <p>5 The question assumes facts that</p> <p>6 are not in evidence. We don't</p> <p>7 have his testimony. You're</p> <p>8 asking her to speculate and</p> <p>9 assume. I'm just going object</p> <p>10 to the form.</p> <p>11 MR. NIX: It's a hypothetical for</p> <p>12 now.</p> <p>13 MR. MOZINGO: You can answer it if</p> <p>14 you can.</p> <p>15 Q. If you assume that Commissioner Houston</p> <p>16 believed that this job required a bachelor's</p> <p>17 degree with no substitution and that he had</p> <p>18 discussed it with Mr. Dillihay, with Mr. Ervin</p> <p>19 and that he had approved the specification</p> <p>20 written as it was with a bachelor's degree and</p> <p>21 no substitution, are you saying that</p> <p>22 Commissioner Houston was wrong in doing that?</p> <p>23 MR. MOZINGO: Object to the form.</p>

Deposition of Joan Owens

June 2, 2008

Page 138

1 A. We are assuming? We're not saying that he  
2 did? We are assuming?  
3 Q. Right now, we are assuming.  
4 A. He can make any decision he wants to make as  
5 Commissioner and do whatever he wants to do  
6 since we are assuming. You're wanting my  
7 opinion now. My opinion is that it would be a  
8 mistake for him to want a bachelor's degree  
9 for a lower position than the Personnel  
10 Director IV when he was allowing it for that  
11 Personnel Director IV position. He allowed it  
12 for Henry's, but he didn't allow it for  
13 mine -- for the assistant.  
14 Q. You're saying that Commissioner Houston  
15 allowed substitution for Mr. Ervin's position  
16 as the head of that department and then  
17 decided not to allow it for somebody under  
18 him, and that doesn't make any sense, right?  
19 A. He didn't hire Henry, but Henry is in a  
20 Personnel Director IV position.  
21 Q. Right.  
22 A. And it has the clause. This job is a lower  
23 position than Henry's, and he's not going to

Page 139

1 allow it for that one. That would not be  
2 right.  
3 Q. Why not? Why not? I mean, if he wants to --  
4 assume he wants to begin the process of  
5 raising the level of the staff. He's got a  
6 new specification before him for a new job,  
7 and he decides to go ahead and require a  
8 bachelor's degree here with no substitution  
9 and then wait for the wage and class study to  
10 complete the rest of the work --  
11 MR. MOZINGO: I'm going to object to  
12 the form. At this point, I'm  
13 going to instruct her not to  
14 answer.  
15 The question assumes facts  
16 not in evidence. The question  
17 calls for her to speculate the  
18 thought processes, the mental  
19 rationale of a witness who's  
20 never testified and whose  
21 alleged acts are not in  
22 evidence, and I think it's  
23 bordering on badgering.

Page 140

1 MR. NIX: Well, I don't want to  
2 badger, and I'm not a good  
3 questioner sometimes. What I'm  
4 trying to get at is, I want to  
5 make sure I understand her  
6 opinion.  
7 MR. MOZINGO: I think she's given  
8 her opinion very clearly.  
9 MR. NIX: Well, okay.  
10 Q. Let me ask you this way. Is it wrong for an  
11 organization to desire to raise the level and  
12 quality of its employees in various positions?  
13 A. No, that is not wrong. But when they only do  
14 it for one position in that whole entire  
15 department for one single reason, it is  
16 wrong. This is the only position that's been  
17 raised.  
18 Sir, I'm sure that you have the  
19 announcements that's been done ever since this  
20 job was announced. And there are many that  
21 was announced at higher paying ranges than  
22 this, and the clause was left in them.  
23 Q. Let me make sure I understand what you're

Page 141

1 saying. Okay? Are you saying that based on  
2 what you know, that there's no way that the  
3 job of Departmental Assistant Personnel  
4 Manager could have deleted -- well, actually,  
5 could have not included the supplementation  
6 clause for the purpose of beginning the  
7 process of raising the level of employees and  
8 creating a higher qualification level of  
9 employee for this particular job?  
10 MR. MOZINGO: I object to the form.  
11 I don't think she can answer  
12 that question. I'll give her  
13 the opportunity.  
14 When you say beginning the  
15 process, I think she just  
16 testified it wasn't done after  
17 this job announcement, so that's  
18 clearly not beginning the  
19 process.  
20 But if you want her to try  
21 to answer that question, I'll  
22 let her try and answer it.  
23 Q. Can you answer it? I don't want you to do

Deposition of Joan Owens

June 2, 2008

Page 142

1 anything you don't -- really, I don't. I  
2 mean, I just -- I don't. In a lot of ways,  
3 it's hard to ask these questions because --  
4 you know, they're hypothetical questions right  
5 now, I mean, until we get everybody's  
6 testimony, and I apologize to you for it. I  
7 really do.

8 A. I'm saying, sir, that I can see where you  
9 would want to raise the bar. People want to  
10 do things like that. But, sir, to raise the  
11 bar with only one and leave all the others  
12 out, I do not understand that except that it  
13 was done to prevent me, deny me the  
14 opportunity to compete for this job.

15 Q. And it's just your position that's the only --  
16 that's the only possible reason there could be  
17 for this?

18 A. Yes, sir.

19 Q. All right.

20 MR. MOZINGO: If you want to look at  
21 taking a break in about ten or  
22 15 minutes -- I won't interrupt  
23 your line of questioning. I'm

Page 144

1 think it's paragraph 42. It is. It's on page  
2 13, count one.

3 The defendant employer, the Alabama  
4 Department of Mental Health and Mental  
5 Retardation, by and through its agents,  
6 employees, and officers named herein  
7 wrongfully, recklessly, and/or intentionally  
8 discriminated with malice against the  
9 plaintiffs on account of their race. As a  
10 result of the defendants' actions, the  
11 plaintiffs have suffered ... and then we've  
12 already talked about those elements of damage  
13 that came from this paragraph.

14 But what I'd like for you to do is give  
15 me -- is tell me everything you know, every  
16 fact you know about the mindset of the  
17 defendants in terms of an intentional  
18 discrimination against you on the basis of  
19 race.

20 MR. MOZINGO: I'm going to let her  
21 answer that question, but I do  
22 want to object. Again, she  
23 can't testify to mindset. We

Page 143

1 just saying in about ten or 15  
2 minutes --

3 MR. NIX: I'll be glad to do  
4 whatever you want to do.

5 MR. MOZINGO: Go ahead right now,  
6 unless you need one now. Do you  
7 need one now?

8 THE WITNESS: No, I'm fine.

9 MR. MOZINGO: Why don't we go ahead  
10 and take one. We've got a pause  
11 here.

12 MR. NIX: It's up to y'all.

13 MR. MOZINGO: Five or ten minutes?

14 MR. NIX: Sure.

15 (Brief recess was taken.)

16 Q. Ms. Owens, I apologize for standing  
17 sometimes. I've had a few back operations. I  
18 just have to do that, you know. Just life.

19 A. That's okay.

20 Q. Your complaint states a cause of action for  
21 discrimination, and it says that the  
22 discrimination was intentional. Let me see if  
23 I can find the place where it says that. I

Page 145

1 believe the mindset will be bore  
2 out by the facts introduced at  
3 trial.

4 But to the extent that she  
5 has an answer or knows an answer  
6 to your question, I'll let her  
7 answer.

8 Q. Let me restate it, then, quickly just on the  
9 basis of what Flynn said.

10 Ms. Owens, is it correct that you don't  
11 have any direct evidence that any of the  
12 defendants intentionally violated your rights  
13 to be free from racial discrimination in this  
14 case, do you?

15 MR. MOZINGO: Object to the form.  
16 Go ahead.

17 A. The evidence I have is that Marilyn holds down  
18 a job that I was not given the opportunity to  
19 apply for.

20 Q. That's it?

21 A. That's the only evidence that I have. You're  
22 talking about something written down on a  
23 piece of paper or ...



Deposition of Joan Owens

June 2, 2008

Page 146

1 Q. Have you heard anybody say, I know that these  
2 defendants did this on purpose to discriminate  
3 against you because you are white?  
4 A. No, I have never heard somebody say that they  
5 discriminated against me.  
6 Q. You've never heard anybody other than the  
7 defendants say that, and you've never heard  
8 the defendants say that, correct?  
9 A. No.  
10 Q. From what we call circumstantial -- and you've  
11 never seen a writing to that effect, right?  
12 A. No, I've never seen anything in writing.  
13 Q. So the basis of your allegation that you were  
14 intentionally discriminated against because of  
15 your race is the fact that Marilyn, who is  
16 black, holds a job that you do not hold? Is  
17 that what you said?  
18 A. My basis is that the job was written for her  
19 and by her, the job she holds. And input was  
20 given to her by Henry Ervin and Otha Dillihay,  
21 and I was not -- I did not even know the job  
22 was going to open when it did, that the clause  
23 would be written -- that it would be written

Page 147

1 without it. I had been given no indication  
2 that the clause would not be in it.  
3 We usually get -- I think it's a pay  
4 class -- Exempt Classification Pay Class  
5 Change, we usually get that on all new jobs or  
6 when there's something put into effect. I did  
7 not get one of those on this job.  
8 Q. Say that again. I'm sorry. Exempt  
9 Classification?  
10 A. Pay Class Change. It's a numbered memo, and  
11 we get that when things are changed. There is  
12 not one on this position. If there was, it  
13 was not circulated to me.  
14 Q. All right. That's a document?  
15 A. Yes, sir, and I don't believe one was done.  
16 Also, it was -- Henry did all this and  
17 did not tell anyone. We found out about it  
18 through State Personnel. And she was writing  
19 her own job. That's what it says in the EEOC  
20 stuff that Courtney sent in is that she helped  
21 make the specifications along with Otha  
22 Dillihay and Henry Ervin, and I didn't even  
23 know that it was being done.

Page 148

1 Q. Anything else?  
2 A. When I asked that it be changed, I talked with  
3 June Lynn.  
4 Q. Okay.  
5 A. And when she said that she couldn't do it  
6 because Mr. Dillihay -- which he was on his  
7 way back; she wasn't going to be in that  
8 position much longer -- that Mr. Dillihay and  
9 Henry wrote it. She did not include at that  
10 point in time that Marilyn worked on it. I  
11 found that out when Courtney sent his response  
12 in to the EEOC.  
13 I told her that I was going to Henry  
14 Ervin and ask that he put the clause in since  
15 he was one of the ones that she said drew up  
16 the specifications. And she said, Joan, you'd  
17 better not. It's going to make Henry mad. I  
18 said, well, he'll just have to get mad because  
19 I'm going to go ask him.  
20 Q. What else?  
21 A. So I went to Henry that same day, and I went  
22 in his office and closed the door and put the  
23 announcement on his desk and I said, Henry,

Page 149

1 I'm asking you to change this so I can apply.  
2 His response was: Joan, I'm tired of your  
3 damn shit. Now, I'm used to curse words, sir,  
4 but not used to being cursed at. He said  
5 that -- I'm trying to get the exact words.  
6 Q. Okay.  
7 A. He said that --  
8 Q. You said, Henry, I'm asking you to change  
9 this?  
10 A. Change this.  
11 Q. Okay.  
12 A. And I was not being belligerent. He said, as  
13 much as I have done for you and Hubbard and  
14 you're as uneducated as you are -- I would  
15 have expected it from Hubbard, but not you.  
16 And I don't know why he didn't expect it  
17 from me. I'm sitting out there with umpteen  
18 years of experience. I have supervised as  
19 many as 19 people at one time, and I was the  
20 person that he always got to go and close down  
21 facilities, downsize facilities.  
22 Q. All right. So you're saying that you went in  
23 to see Henry. Was it the same day you got the

Deposition of Joan Owens

June 2, 2008

Page 150

1 announcement?

2 A. Yes, it was the exact same day. I went to

3 June first, and then I went to Henry.

4 Q. When you said June first --

5 A. June Lynn.

6 Q. Okay. And then -- so when the exchange

7 occurred between you and Henry, Henry, I'm

8 asking you to change this and he said whatever

9 he said --

10 A. He did not mention that they were trying to

11 upsize the office or he was not trying to say

12 that they were trying to make the office

13 better, which I don't understand that. If

14 they were trying to make the office better,

15 why was Marilyn going to be part of it? If

16 the office was broken, she was part of it.

17 Q. I didn't say anything about the office being

18 broken or anything else, did I?

19 A. No. You were saying that the Commissioner was

20 trying to make it a --

21 Q. Trying to upgrade.

22 A. Trying to upgrade it. Well, if he was trying

23 to upgrade it, Marilyn was there alongside

Page 151

1 Lynn and I. Who said that we weren't doing as

2 good a job as Marilyn?

3 Q. Well, I don't know. No one did, I guess. But

4 the specification was written -- don't you

5 understand the specification was written to

6 require a college degree?

7 A. The specification was written to leave me out

8 because I was white.

9 Q. You don't allow any room -- you don't allow

10 any room for any other explanation?

11 A. No, sir.

12 Q. All right. Let's see. What else? Keep going

13 for me. I need to know everything. Okay?

14 A. After that, June met me and she said, did you

15 ask Henry? And I said, yes, I did. And I

16 said, you're right. He did get mad. She

17 said, why? And I told her what he said.

18 And she said, do you want me to get

19 Courtney to talk to him? And I said, no,

20 it'll just make him that much madder and it's

21 not going to do any good.

22 Q. All right. Now, let me ask you this. I mean,

23 did June -- when she said do you want me to

Page 152

1 get Courtney to talk to him, did she say what

2 she was going to get him to talk -- what she

3 was going to get Courtney to talk to Henry

4 about?

5 A. Well, it sounded like to me that she was going

6 to get --

7 Q. No. What did she say?

8 A. She didn't say why. She said, do you want me

9 to get Courtney to talk to him?

10 Q. Okay.

11 A. And it was because of the abusive language I'm

12 sure. I said, no, don't worry about it.

13 It'll just make him that much madder.

14 Q. All right. Then what?

15 A. It went on and they did the announcements

16 and -- well, the announcement was made. And

17 they did the interviews, and Marilyn was

18 chosen. What a big surprise.

19 Q. Why do you say that?

20 A. Sir, she wrote her own job specs. I wasn't

21 even given privy of knowing that the job was

22 open, and she wrote her own job specs. Why

23 was the same classification as myself chosen

Page 153

1 to do the job specs and I wasn't even given

2 the information that the job was going to be

3 opened? She was a III. I was a III, and Lynn

4 was a III.

5 Q. Is there any other reason you say big

6 surprise, Marilyn was chosen, big surprise,

7 other than the fact you say she wrote the job

8 specs?

9 A. No, sir.

10 Q. That's it?

11 A. It was written for Marilyn because she's

12 black. Dillihay is black. Henry is black. I

13 was discriminated against because of that.

14 Q. It was written by Marilyn because Henry, Otha,

15 and Marilyn are all black. Is there anything

16 else?

17 A. No, sir.

18 Q. Now, there's a place in the complaint that

19 states that the plan -- I'm not sure I'm

20 stating it right. I can find it if you want

21 me to and read it to you. Basically, it says

22 that the plan was that Marilyn would advance

23 into Henry's position when Henry retired. Do



Deposition of Joan Owens

June 2, 2008

Page 154

1 you remember that in the allegations?  
 2 A. Yes, sir.  
 3 Q. Did I pretty much say it correctly the way it  
 4 is in the allegations of the complaint?  
 5 A. I would think you did. I'm not looking at it  
 6 right now either.  
 7 Q. Anyway, where did that come from?  
 8 A. Well, I'll tell you where it came from. When  
 9 I visited the EEOC office in Birmingham the  
 10 day after it was announced that Marilyn got  
 11 the job, I took an annual leave day and went  
 12 to see the EEOC.  
 13 And when I presented the information to  
 14 the lady at the EEOC office and laid down all  
 15 the information, I said, and by the way, Henry  
 16 is supposedly retiring before long. Who do  
 17 you think is going to get the job? And she  
 18 said, oh, it's plain. Ms. Benson will get  
 19 that job.  
 20 Q. Who was that that you talked to?  
 21 A. Linda Birdsong at EEOC.  
 22 Q. Now, is she white or black?  
 23 A. She's black.

Page 155

1 Q. What's her position?  
 2 A. I don't know.  
 3 Q. So the day after it was announced that Marilyn  
 4 got the job --  
 5 A. I took an annual leave day and drove to  
 6 Birmingham.  
 7 Q. And that's when you filed your complaint --  
 8 A. Yes, sir.  
 9 Q. -- or your charge?  
 10 A. Yes, sir.  
 11 Q. And you said to Linda Birdsong --  
 12 A. I showed her the announcement. I showed her  
 13 the announcements that had been made after  
 14 that, that the clause was still in there. And  
 15 she told me those exact words.  
 16 Q. So she had everything you had to go on, right?  
 17 A. No. There was lots more stuff later that she  
 18 would call and -- well, it wasn't her. My  
 19 case was turned over to two different people.  
 20 She was just the intake person.  
 21 I mean, you just go in and they have to  
 22 kind of decide when you first go in if they  
 23 feel like it's a charge or not, and then they

Page 156

1 go from there. You can be dismissed as soon  
 2 as you walk in, you know. They go over it at  
 3 that point in time and then they investigate.  
 4 Q. Let me make sure I'm correct about this. The  
 5 complaint states that the plan was that  
 6 Marilyn would get Henry's position when Henry  
 7 retired. And the reason that's in the  
 8 complaint is because the day you took your  
 9 complaint or your charge to the EEOC and gave  
 10 it to Linda Birdsong, their intake person, you  
 11 showed her eight announcements where the  
 12 substitution clause was still left in it,  
 13 showed her your complaint, told her that your  
 14 understanding was that Henry would be retiring  
 15 soon and who do you think will get that job,  
 16 and Linda Birdsong said, it's plain; she'll  
 17 get it?  
 18 A. Sir, I had already made that determination  
 19 myself as well is why I put the stuff down in  
 20 front of her, and she saw it, too. But, no, I  
 21 feel that way. I feel that way right now, is  
 22 when Henry leaves the office -- I mean, who  
 23 would be the natural choice but the person

Page 157

1 that's his assistant?  
 2 Q. There were two things, then: There was the  
 3 Linda Birdsong statement, and then there was  
 4 your belief?  
 5 A. Yes, sir.  
 6 Q. Those two things are the only two reasons that  
 7 that is in the complaint; is that right?  
 8 A. I guess so.  
 9 Q. You have no evidence, documentary evidence  
 10 that --  
 11 A. No, sir, I have --  
 12 Q. -- that supports that?  
 13 A. No, sir.  
 14 Q. Have you ever heard anybody say anything like  
 15 that?  
 16 A. No, sir.  
 17 MR. MOZINGO: Are you stipulating  
 18 that won't happen?  
 19 MR. NIX: Why would I stipulate to  
 20 something that has nothing to do  
 21 with this lawsuit?  
 22 MR. MOZINGO: I'm just asking. The  
 23 evidence will come. I'm just

Deposition of Joan Owens

June 2, 2008

Page 158	Page 160
<p>1 saying, will you stipulate that</p> <p>2 that won't happen?</p> <p>3 MR. NIX: Oh, it will?</p> <p>4 MR. MOZINGO: Yeah.</p> <p>5 MR. NIX: Okay.</p> <p>6 Q. Do you know what the term pretext means?</p> <p>7 A. Not real well. Do you want to tell me?</p> <p>8 Q. Let's say a pretext is a, quote, phony reason</p> <p>9 for doing something. A phony reason.</p> <p>10 A. Phony reason.</p> <p>11 Q. A pretext -- let's call it a phony reason for</p> <p>12 doing something. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Has the Department or anyone in the Department</p> <p>15 in a position to know given you any reason for</p> <p>16 this specification being written the way it's</p> <p>17 written?</p> <p>18 A. Did somebody tell me that the specification</p> <p>19 for the Assistant Personnel Director -- no one</p> <p>20 has told me the reason it was worded that way.</p> <p>21 Q. Nobody has told you the reason it was what,</p> <p>22 now?</p> <p>23 A. Isn't that what you're wanting to know?</p>	<p>1 asked a lot of questions. I try not to make</p> <p>2 statements if I can help it. Sometimes I</p> <p>3 can't help it.</p> <p>4 A. Well, you led me to believe it, then.</p> <p>5 Q. What?</p> <p>6 A. That Mr. Houston said --</p> <p>7 Q. I may have done that. I may have done that.</p> <p>8 Now, has anyone else given you any other</p> <p>9 reason --</p> <p>10 A. I haven't talked to anybody else.</p> <p>11 Q. Okay.</p> <p>12 A. I talked to June and I talked to Henry that</p> <p>13 day, but I haven't questioned anybody about</p> <p>14 the specifications for that job since then.</p> <p>15 Q. So you know absolutely nothing about the</p> <p>16 rationale for leaving it out of the</p> <p>17 upper-level jobs, right?</p> <p>18 A. I remember one thing that June said. She said</p> <p>19 that they wanted to get somebody in there that</p> <p>20 could do recruiting. And I said, well, y'all</p> <p>21 didn't even ask me if I could recruit, because</p> <p>22 I have recruited doctors for Elmore Community</p> <p>23 Hospital. I have recruited before. I said,</p>
Page 159	Page 161
<p>1 Q. I just --</p> <p>2 A. If somebody told me that?</p> <p>3 Q. Has anyone told you why it was written the way</p> <p>4 it was without the substitution clause?</p> <p>5 A. June Lynn told me when I went in there that</p> <p>6 day that they were going to start leaving the</p> <p>7 clause out of all upper level, higher-paying</p> <p>8 jobs.</p> <p>9 Q. Did she say why?</p> <p>10 A. If she said why, sir, I don't remember it.</p> <p>11 Q. Okay.</p> <p>12 A. She said that they were going to leave it out</p> <p>13 of all of the upper-paying jobs, and that's</p> <p>14 when she told me that Henry and Otha Dillihay</p> <p>15 wrote the specifications.</p> <p>16 Q. All right.</p> <p>17 A. And she didn't say that Mr. Houston said do it</p> <p>18 either.</p> <p>19 Q. Is that the only thing you've heard about why?</p> <p>20 A. Well, you said that Mr. Houston said -- a</p> <p>21 while ago when you was talking, that</p> <p>22 Commissioner Houston said to do it.</p> <p>23 Q. I don't remember what I said. I asked -- I've</p>	<p>1 and unless I can apply, you'll never know</p> <p>2 whether I recruited or not. That's what she</p> <p>3 said, recruitment.</p> <p>4 Q. They wanted to get somebody in --</p> <p>5 A. That could do recruitment.</p> <p>6 Q. What else?</p> <p>7 A. I think that's -- that's what she dwelled on</p> <p>8 was the recruitment and that the higher-level</p> <p>9 jobs, that they were going to leave the clause</p> <p>10 out.</p> <p>11 Q. So on the recruitment, she was specifically</p> <p>12 talking about this job?</p> <p>13 A. Yes, and I remember saying, well, I recruited</p> <p>14 doctors for the hospital.</p> <p>15 Q. Okay. No other reasons or rationale, then?</p> <p>16 A. Best I recall, sir. It's been three years.</p> <p>17 Q. I think you've already told me that it seems</p> <p>18 like to you that if they were going to leave</p> <p>19 that clause out of all of the upper-level</p> <p>20 jobs, they would have done it from that point</p> <p>21 forward.</p> <p>22 A. Yes, sir.</p> <p>23 Q. And that there's no other -- there's no reason</p>

Page 162	Page 164
<p>1 for them not to have?</p> <p>2 A. Well, the thing about it is, it's the only job</p> <p>3 that's been announced that it's been left out</p> <p>4 of. And if they were going to start doing</p> <p>5 that, why is that the only one?</p> <p>6 Q. Maybe you'll get an answer to that.</p> <p>7 Now, in your complaint in that same</p> <p>8 paragraph we were talking about, which is</p> <p>9 paragraph number 42, page 13, you said that</p> <p>10 this was done -- in other words, leaving out</p> <p>11 the substitution clause and discriminating</p> <p>12 against you thereby --</p> <p>13 A. Yes, sir.</p> <p>14 Q. -- because you were white was done</p> <p>15 intentionally with malice. Explain that to</p> <p>16 me.</p> <p>17 A. Don't you think that it's malice when somebody</p> <p>18 has worked for an organization for as long as</p> <p>19 I had, I had done everything that I had been</p> <p>20 asked to do and, I believe, more --</p> <p>21 I have closed down a facility. I had</p> <p>22 downsized a facility. I had helped downsize</p> <p>23 another facility.</p>	<p>1 malicious?</p> <p>2 MR. MOZINGO: Title 7 discrimination</p> <p>3 is.</p> <p>4 Q. Is it your belief --</p> <p>5 A. To judge somebody on the color of their skin</p> <p>6 is wrong and malicious. We should not be</p> <p>7 doing something like.</p> <p>8 Q. I agree with that. I agree with that</p> <p>9 completely. I don't think anybody would</p> <p>10 disagree with you, that that should not be</p> <p>11 done.</p> <p>12 But I guess what I'm asking you is this.</p> <p>13 Is it your belief that if that had been done</p> <p>14 in your case here --</p> <p>15 A. It was done, sir. I am living proof that it</p> <p>16 was done. I've sat in that office five days a</p> <p>17 week and it being done.</p> <p>18 Q. I don't want to get in an argument with you.</p> <p>19 A. I'm not. I'm sorry.</p> <p>20 Q. I just want to know this. Is the mere fact</p> <p>21 that it was done in your opinion on the basis</p> <p>22 of your skin color malicious?</p> <p>23 A. Yes.</p>
Page 163	Page 165
<p>1 -- and the people that wrote that up and</p> <p>2 intentionally left that out, do you not feel</p> <p>3 that that would be malice?</p> <p>4 Q. No, ma'am, but you apparently do.</p> <p>5 A. Yes, sir.</p> <p>6 Q. Are those the only reasons that you have, is</p> <p>7 just that you're Joan Owens and you've been</p> <p>8 there a long time and you've done a lot of</p> <p>9 stuff?</p> <p>10 A. No, that's not my only reasons.</p> <p>11 Q. All right. Tell me the rest.</p> <p>12 A. My reasons is that I have done all of that</p> <p>13 stuff and I am just as qualified as</p> <p>14 Mrs. Benson is, but my skin is white and hers</p> <p>15 is black. And they wanted a black Assistant</p> <p>16 Personnel Director, not a white one.</p> <p>17 Q. Who's they?</p> <p>18 A. Henry, Otha Dillihay, they wrote the specs, or</p> <p>19 at least -- and Ms. Benson.</p> <p>20 Q. Any other reasons why this would be malice,</p> <p>21 malicious, done maliciously?</p> <p>22 A. I think discrimination is malicious.</p> <p>23 Q. By definition, all discrimination is</p>	<p>1 Q. Okay. Are you aware of this ever occurring at</p> <p>2 any other time within the Department of Mental</p> <p>3 Health?</p> <p>4 And I want to make -- I want to define</p> <p>5 this, okay, when I say this. Okay? Because I</p> <p>6 think the relevant inquiry is whether a</p> <p>7 similar occurrence happened within a</p> <p>8 reasonable period of time of this particular</p> <p>9 occurrence. Okay?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Now, similarity is a difficult thing to</p> <p>12 define. I mean, it's subject to a lot of</p> <p>13 definitions. A lot of people disagree. But</p> <p>14 for my purposes today, let me ask it this</p> <p>15 way.</p> <p>16 Assume that similarity is the creation of</p> <p>17 a new job using specifications and</p> <p>18 announcements to fill this job which contain</p> <p>19 requirements of job qualifications that does</p> <p>20 not allow for substitution. Let's see.</p> <p>21 Similarity. The creation of a new job</p> <p>22 using specifications and announcements to fill</p> <p>23 this job which contain requirements of job</p>

Page 166

1 qualifications that do not allow for  
2 substitution but, instead, insist upon a  
3 degree. Can we use that for similarity just  
4 for the purpose of my question here?

5 MR. NIX: It's an assumption. I'm  
6 not asking you to agree to it.

7 MR. MOZINGO: My question is this.

8 Can you redefine it or define it  
9 clearly and ask the question  
10 because you were formulating the  
11 question at the same time you  
12 were writing it down. I'm  
13 not ...

14 I just would ask that you  
15 would state it for the record  
16 now that you're through  
17 formulating it so we can be sure  
18 we know what the question is.

19 MR. NIX: Ready?

20 MR. MOZINGO: Ready. Waiting on  
21 you.

22 Q. Are you aware of any case where discrimination  
23 has occurred at Mental Health/Mental

Page 167

1 Retardation where there was the creation of a  
2 new job using specifications and announcements  
3 to fill this job which contain requirements of  
4 job qualifications that do not allow for  
5 substitution but, instead, insist upon a  
6 degree?

7 Does that make sense to you?

8 A. It makes sense.

9 Q. Okay.

10 MR. MOZINGO: She can answer it.  
11 I'm just going to object to the  
12 form.

13 Go ahead. If you can  
14 answer it and understand it, go  
15 ahead. Object to the form.

16 A. The best way I can answer that is I have never  
17 participated in a situation like that. As far  
18 as other jobs that's been done, I can't say.  
19 But I can say that I have never participated  
20 in a situation like that as a Personnel  
21 Specialist III.

22 Q. When you say --

23 A. Or as a personnel director.

Page 168

1 Q. When you say you've never participated, do you  
2 mean you've never committed this act?

3 A. No, I haven't. No.

4 Q. Or are you saying that's never come across my  
5 desk?

6 A. That has not come across my desk. I have not  
7 done that or been a part of it.

8 Q. Or known about it?

9 A. Or known about it.

10 Q. As far as you know, it's never occurred?

11 A. True. But as far as it happening, I don't  
12 know.

13 Q. I've got you. All right. Let's do another  
14 one. Are you aware of any case or situation  
15 where discrimination has occurred at Mental  
16 Health and Mental Retardation where there was  
17 the creation of a new job using specifications  
18 and announcements to fill this job which  
19 constituted the preselection of a particular  
20 individual by way of the manner in which the  
21 specification was stated?

22 MR. MOZINGO: Object to the form.

23 A. I'll answer the same way I answered the past

Page 169

1 question. I have never been a party to that,  
2 of preselecting someone for a job.

3 Q. All right. What do you mean by never been a  
4 party to that?

5 A. Well, I'm a Personnel Specialist III, and I  
6 interview and select candidates for jobs, and  
7 I've never done that before.

8 Q. Okay. Has anything like that come across your  
9 desk?

10 A. No, sir.

11 Q. Are you aware of anything like that ever  
12 occurring at Mental Health?

13 A. No.

14 Q. Are you aware of that ever occurring at any  
15 facility of Mental Health?

16 A. No.

17 Q. And the first question was about the creation  
18 of a specification and announcements which  
19 contain requirements of job qualifications  
20 that do not allow for substitution but,  
21 instead, insist upon a degree. Okay? And you  
22 said you don't know of any of those.

23 A. No, sir.



Page 170	Page 172
<p>1 Q. And I didn't ask you about facilities. I just</p> <p>2 really asked you about the Central Office.</p> <p>3 But do you know of any in that category that</p> <p>4 have occurred in the facility setting?</p> <p>5 A. No, sir.</p> <p>6 Q. If you had to define what is similar to your</p> <p>7 case, how would you define it? If you had to</p> <p>8 define a situation that in your opinion would</p> <p>9 denote a situation similar to your case here,</p> <p>10 how would you define it?</p> <p>11 A. I would define it as discrimination.</p> <p>12 Q. Well, I mean, but how would you -- what words</p> <p>13 would you use to describe it? Do you see how</p> <p>14 I've described it here in these --</p> <p>15 A. I would describe it as the job specs being</p> <p>16 written for and by the person that's going to</p> <p>17 get the job. Henry knew my experience and</p> <p>18 education. Marilyn knew my experience and</p> <p>19 education. I'm sure Dillihay did. And they</p> <p>20 wrote the job to intentionally leave me out.</p> <p>21 Q. All right.</p> <p>22 A. Because I had the experience. I had</p> <p>23 supervisory experience. I had years of</p>	<p>1 Q. How can you be so certain?</p> <p>2 A. Sir, I have many, many years of personnel</p> <p>3 experience. I worked in a hospital many</p> <p>4 years. And I participated in all phases of</p> <p>5 personnel, plus I worked in two different</p> <p>6 facilities. I helped in the closure, in the</p> <p>7 downsizing of those facilities. I supervised</p> <p>8 four different departments at a hospital for</p> <p>9 many years.</p> <p>10 And with all of the experience I have and</p> <p>11 with knowing the facilities as well as I did</p> <p>12 by working in the facilities, I feel that I</p> <p>13 would have gotten this job. I feel that I</p> <p>14 could have gone into an interview and been</p> <p>15 able to have been selected for this job.</p> <p>16 Q. That's what you're feeling -- that's what you</p> <p>17 believe?</p> <p>18 A. I believe that in my heart, yes, sir.</p> <p>19 Q. Do you believe that based upon the people that</p> <p>20 were interviewed here, or do you believe that</p> <p>21 based upon no matter who would have applied if</p> <p>22 substitution had been allowed?</p> <p>23 A. Well, we don't know who would have applied.</p>
Page 171	Page 173
<p>1 experience in facilities. That's what Central</p> <p>2 Office is there for, is to take care of the</p> <p>3 facilities. And I had worked in a facility.</p> <p>4 So had Ms. Hubbard.</p> <p>5 Q. All right. Now, based on that definition of</p> <p>6 similarity, okay, based on that description,</p> <p>7 are you aware of that ever occurring at any</p> <p>8 other time besides what you allege here?</p> <p>9 A. Not that I had anything to do with --</p> <p>10 Q. All right.</p> <p>11 A. -- or I would report discrimination</p> <p>12 immediately.</p> <p>13 Q. Are you aware of what you define as a</p> <p>14 similarity here occurring anywhere within</p> <p>15 Mental Health and Mental Retardation or any of</p> <p>16 the facilities, the Central Office at any</p> <p>17 time?</p> <p>18 A. Not that I've been a part of.</p> <p>19 Q. Let me ask you a question. You have really</p> <p>20 seemed quite certain that if you had been</p> <p>21 allowed to apply for this job, you would have</p> <p>22 gotten this job.</p> <p>23 A. Yes, sir.</p>	<p>1 Q. No, we don't.</p> <p>2 A. But I do know that based on the places that</p> <p>3 I've worked and the type work I have done, it</p> <p>4 would have had to have been somebody that</p> <p>5 would have had to have been within the</p> <p>6 Department to have been able to have -- to</p> <p>7 have done that, and I don't believe anybody</p> <p>8 else would have --</p> <p>9 Q. Why would it have to be somebody within the</p> <p>10 Department?</p> <p>11 A. Well, sir, if you look at the KSA's on that</p> <p>12 job announcement, it says a thorough knowledge</p> <p>13 of Department of Mental Health policies and</p> <p>14 procedures. Now, how do you think you're</p> <p>15 going to go outside of the Department and get</p> <p>16 somebody that's going to know our policies and</p> <p>17 procedures? You're not.</p> <p>18 So you've ruled everybody that works</p> <p>19 outside the Department out right there because</p> <p>20 your questions have to come from the KSA's.</p> <p>21 And when they ask that person that question,</p> <p>22 how are they going to answer it if they worked</p> <p>23 at Montgomery Seed &amp; Feed? So I'm going to</p>

Deposition of Joan Owens

June 2, 2008

Page 174	Page 176
<p>1 have an edge right there on anybody that would</p> <p>2 apply from outside.</p> <p>3 Q. So you're saying that the fact that the person</p> <p>4 had to know the policies and procedures, the</p> <p>5 rules, the regs, the law --</p> <p>6 A. Yes, sir, according to the announcement.</p> <p>7 Q. Right. I know. Applicable to a job in that</p> <p>8 Department, that there's no other person that</p> <p>9 could possibly have either known that or</p> <p>10 brushed up on that and studied it and</p> <p>11 understood it prior to the time of an</p> <p>12 interview; is that what you're saying?</p> <p>13 A. I don't know of anybody else that knows it</p> <p>14 much better than I do.</p> <p>15 Q. You know --</p> <p>16 A. Unless they wanted to demote. There may be</p> <p>17 some of the Personnel Directors out in the</p> <p>18 facilities that wanted to demote and come in.</p> <p>19 They could probably have done it.</p> <p>20 Q. You don't think somebody could have had a good</p> <p>21 bit of experience in personnel and gained</p> <p>22 access to the rules and regulations if they</p> <p>23 otherwise did not know them and the other</p>	<p>1 across my desk. It was never given to me.</p> <p>2 We usually would get together in Henry's</p> <p>3 office and discuss the different jobs that we</p> <p>4 were working on sometimes once a week,</p> <p>5 sometimes once a month. It varied. But this</p> <p>6 never came up except when Henry -- I mean,</p> <p>7 when Lynn asked him about the job that the</p> <p>8 lady had called from State Personnel regarding</p> <p>9 it.</p> <p>10 Q. What else? What other violations are there?</p> <p>11 Violations of the --</p> <p>12 A. Department violations?</p> <p>13 Q. Violations of any policy.</p> <p>14 A. That would be what I would say.</p> <p>15 Q. Just this one thing here?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What do you do with this when you get it,</p> <p>18 Exempt Classification --</p> <p>19 A. Well, see, you have to know that when you</p> <p>20 start to announce the position because pay</p> <p>21 ranges change for different jobs at different</p> <p>22 times. And you have to keep that so you will</p> <p>23 know what's going on.</p>
Page 175	Page 177
<p>1 material necessary to be known, study up on it</p> <p>2 before the interviews, know it well and</p> <p>3 interview well based on that?</p> <p>4 A. Yes, sir. That can always happen. For me to</p> <p>5 say that can't happen, that would be crazy.</p> <p>6 But I'm saying that I believe that I am</p> <p>7 probably the best candidate that could have</p> <p>8 applied for that job, and I believe that I had</p> <p>9 a great chance of getting it. Yes, I do.</p> <p>10 Q. You believe you had a great chance. All</p> <p>11 right.</p> <p>12 Did the Department in any way violate its</p> <p>13 own procedures in the way this job was</p> <p>14 handled, any aspect of it?</p> <p>15 A. Well, one thing, I told you that we always got</p> <p>16 a copy in Personnel -- a copy of the Exempt</p> <p>17 Classification and Pay Class Change, and there</p> <p>18 was never one came out on it. Never came</p> <p>19 across my desk.</p> <p>20 Q. That's the what form?</p> <p>21 A. It's a numbered memo. It's called Exempt</p> <p>22 Classification and Pay Class Change, I think,</p> <p>23 and it's got a number on it. It never came</p>	<p>1 We get -- It will come out and it will</p> <p>2 tell you, you know, what's happening in</p> <p>3 different jobs, you know, if a pay class has</p> <p>4 changed or whatever. So we keep that. We</p> <p>5 need it. And it goes to all the Personnel</p> <p>6 Directors out in the facilities.</p> <p>7 Q. Are you saying you just didn't get it or it</p> <p>8 was never sent?</p> <p>9 A. I don't believe that there was ever one</p> <p>10 created for it.</p> <p>11 Q. What makes you think that?</p> <p>12 A. Well, if there had been, looks like I would</p> <p>13 have gotten it.</p> <p>14 Q. Any other policy, law, rule, or regulation</p> <p>15 violated by the Department in the way it</p> <p>16 handled this matter?</p> <p>17 A. Title 7.</p> <p>18 Q. We know about that. How about the procedures</p> <p>19 dated June 30, 2005? Were any of those</p> <p>20 procedures violated?</p> <p>21 MR. MOZINGO: Object to the form.</p> <p>22 Which procedures are those? I'm</p> <p>23 objecting because I don't know</p>



Deposition of Joan Owens

June 2, 2008

Page 178

1 what you're --  
 2 MR. NIX: I understand.  
 3 (Defendant's Exhibit 5 was marked for  
 4 identification.)  
 5 Q. I'm going to show you what I've marked as  
 6 Defendant's Exhibit Number 5 entitled Exempt  
 7 Selection Procedure dated June 30, 2005. Have  
 8 you ever seen those?  
 9 A. Yes.  
 10 Q. What are those?  
 11 A. Exempt Selection Procedure.  
 12 Q. Are those in effect?  
 13 A. Yes, sir, as far as I know.  
 14 Q. They came in effect June 30, 2005?  
 15 A. (Indicates.)  
 16 Q. Were any of those Exempt Selection Procedures  
 17 violated in your opinion?  
 18 A. In my opinion as far as I know -- because this  
 19 hiring file, I was not privy to it. All the  
 20 applications went to Mike Mathis at Partlow.  
 21 And so as far as how he did it when the  
 22 applications came in and what happened with  
 23 all that --

Page 179

1 All the information and stuff, sir --  
 2 I've never seen the hiring file. I've not  
 3 seen it until today. I've not seen it today.  
 4 Q. You cannot testify, then, that anything in  
 5 Defendant's Exhibit 5 was violated?  
 6 A. No, sir, I cannot. I've not seen it.  
 7 Q. You know that a deposition is a continuing  
 8 document; in other words, your obligation to  
 9 supplement is just like your obligation to  
 10 supplement interrogatory answers or anything  
 11 else. So if you come across an answer to that  
 12 question and you think that there was a  
 13 violation, I would appreciate your telling  
 14 Mr. Mozingo so he can let me know.  
 15 A. I thought you were fixing to say you were  
 16 going to make me come back tomorrow and do it  
 17 again.  
 18 Q. No. I don't want to any more than you do. I  
 19 promise. I want to go home and go to bed,  
 20 maybe watch a little basketball or something.  
 21 Okay. How about departmental policies?  
 22 Do you know of any of those that were violated  
 23 in this?

Page 180

1 A. No, sir.  
 2 Q. Any policies of any kind, departmental  
 3 policies that you're aware of that were  
 4 violated with respect to this job?  
 5 A. No, sir, none that I know of.  
 6 Q. Okay.  
 7 A. All I can go on is the announcement and what  
 8 happened as a result of the announcement.  
 9 Q. Paragraph 47 of the complaint on page 17 says  
 10 this: The State of Alabama has certain  
 11 policies and procedures concerning the  
 12 establishment of new positions and the setting  
 13 of specifications for such positions  
 14 regardless of a person's race, religion,  
 15 national origin, color, et cetera. These  
 16 policies and procedures were wantonly,  
 17 recklessly -- excuse me, wantonly --  
 18 (Brief interruption.)  
 19 Q. There's two wantonlies there. Wantonly -- I'm  
 20 going to skip one of them.  
 21 -- recklessly, wantonly, willfully and/or  
 22 intentionally violated in the establishment  
 23 and filing of the position of Assistant

Page 181

1 Personnel Manager of the Bureau of Human  
 2 Resources. Is that correct?  
 3 A. I believe that it is.  
 4 Q. Okay. What policies are spoken of here,  
 5 policies and procedures?  
 6 A. Well, we have a policy that we are an equal  
 7 opportunity employer, and I believe that  
 8 that --  
 9 Q. You believe that that was violated?  
 10 A. Yes, sir.  
 11 Q. Okay. Is there anything else?  
 12 A. No.  
 13 Q. Do you have a written contract, employment  
 14 contract?  
 15 A. No, sir.  
 16 Q. What is a promotion to you? What does that  
 17 mean to you?  
 18 A. A job with more responsibilities and at a  
 19 higher rate of pay.  
 20 Q. Does a promotion in your opinion have to be  
 21 within the line of jobs or within the job  
 22 series that you work in already?  
 23 A. No, it doesn't have to be.

Page 182	Page 184
<p>1 Q. You're just saying anytime you can go from one</p> <p>2 job to another job that has more</p> <p>3 responsibility and pays more, then that's a</p> <p>4 promotion to you?</p> <p>5 A. You could call that a promotion, yes.</p> <p>6 Q. And while you believe that you would have been</p> <p>7 selected if you had been allowed to use the</p> <p>8 substitution clause, you can't tell me for</p> <p>9 sure that that's correct, can you?</p> <p>10 A. No.</p> <p>11 Q. What you're saying is that you think you have</p> <p>12 the qualifications and you think that you</p> <p>13 would have had a real good chance of being</p> <p>14 selected as the person for this job if</p> <p>15 substitution had been allowed. Is that the</p> <p>16 right way to put it?</p> <p>17 A. Yes, sir, with all the experience that I have</p> <p>18 and with the job knowledge that I have, I feel</p> <p>19 that I had a very good chance of being</p> <p>20 selected for this position. Very good.</p> <p>21 Q. Did you have any agreement with the Department</p> <p>22 of Mental Health that you would receive</p> <p>23 periodic advancement in terms of</p>	<p>1 And the announcement was written in such a way</p> <p>2 that it denied me the opportunity to apply.</p> <p>3 Q. Go ahead.</p> <p>4 A. And that the ones that wrote the announcement</p> <p>5 had privy to all the information, including</p> <p>6 the person that received the job that was at</p> <p>7 the same job classification as myself.</p> <p>8 Q. All right. Go ahead.</p> <p>9 A. And I made it known that I wanted the job and</p> <p>10 wanted to apply and asked that the job</p> <p>11 specs -- the job -- minimum qualifications be</p> <p>12 changed to include the clause. And I was</p> <p>13 denied that by telling me that all jobs that</p> <p>14 were being paid at a higher rate, that they</p> <p>15 were going to leave it out of those specs.</p> <p>16 And until this very day, that has not been</p> <p>17 done, not with one job, just this one.</p> <p>18 Q. What else?</p> <p>19 A. I guess that pretty well tells it.</p> <p>20 MR. MOZINGO: Chip, you're probably</p> <p>21 going to ask her about all those</p> <p>22 reasons. Before you get into</p> <p>23 that, can I take a break?</p>
Page 183	Page 185
<p>1 responsibility and increase in terms of pay?</p> <p>2 A. No, sir.</p> <p>3 Q. Was everything pretty much independent? You</p> <p>4 were in a job. There were other jobs there.</p> <p>5 If there was another job you wanted and there</p> <p>6 was an opening, you could apply for it, but</p> <p>7 there was no guarantee that you would get it?</p> <p>8 A. That's true.</p> <p>9 Q. Now, your complaint alleges that John Houston,</p> <p>10 Otha Dillihay, Henry Ervin, and Marilyn Benson</p> <p>11 entered into a conspiracy to establish a</p> <p>12 theretofore unknown position of Assistant</p> <p>13 Personnel Manager for the sole benefit and</p> <p>14 placement of Benson in that job in violation</p> <p>15 of United States and the State of Alabama's</p> <p>16 laws, rules, and regulations. Okay?</p> <p>17 A. Yes, sir.</p> <p>18 Q. That's paragraph 62 on page 21 of the</p> <p>19 complaint.</p> <p>20 Tell me every fact you know that supports</p> <p>21 the allegation that there was a conspiracy</p> <p>22 between those people.</p> <p>23 A. Well, to begin with, it was kept a secret.</p>	<p>1 MR. NIX: Of course.</p> <p>2 (Brief recess was taken.)</p> <p>3 Q. Ms. Owens, you said in regard to the</p> <p>4 conspiracy that, number one, it was kept a</p> <p>5 secret; in other words, the job was kept a</p> <p>6 secret.</p> <p>7 A. Yes, sir.</p> <p>8 Q. I have seen an allegation in the complaint</p> <p>9 that Henry Ervin asked some way to keep it</p> <p>10 quiet.</p> <p>11 A. Yes.</p> <p>12 Q. Is that what you were referring to?</p> <p>13 A. That's one of the things, yes.</p> <p>14 Q. That's the only thing I've seen.</p> <p>15 A. Okay.</p> <p>16 Q. So can you tell me what else there is on</p> <p>17 the -- it was kept a secret?</p> <p>18 A. Okay. The other thing was -- is like I told</p> <p>19 you, that in our staff meetings, we go around</p> <p>20 the room and tell what we're doing and what</p> <p>21 jobs are open and what we're going to be</p> <p>22 doing. And Henry nor Marilyn ever said</p> <p>23 anything about this.</p>

Deposition of Joan Owens

June 2, 2008

Page 186

1 She was working on it. It was never  
 2 brought up. He never said she was working on  
 3 it. And then by telling another lady that  
 4 helped send the stuff across the street to  
 5 State Personnel, he told her to keep it on the  
 6 QT.  
 7 Q. Who was that?  
 8 A. Becky Burrell. Now, why would you tell  
 9 somebody to keep it a secret if it's not a  
 10 conspiracy?  
 11 Q. Can you think of any good reason to keep it  
 12 quiet?  
 13 A. No, except to keep myself and Lynn from  
 14 knowing about it.  
 15 Q. So just because you can't think of another  
 16 reason to keep it quiet if they wanted to keep  
 17 it quiet and that's what they preferred to do,  
 18 then --  
 19 A. If you're wanting to fill a position and you  
 20 need a real good person, why do you want to  
 21 keep it quiet? You should want everybody in  
 22 the world to know that a position is being  
 23 looked at and get as many good applicants in

Page 187

1 there as you can get. It shouldn't be kept a  
 2 secret.  
 3 Q. Well, you're saying that the only reason they  
 4 could possibly have wanted to keep it a secret  
 5 was so that neither you nor Ms. Hubbard would  
 6 find out about it?  
 7 A. That's right.  
 8 Q. Because there was some kind of conspiracy  
 9 going on to keep you out of this job?  
 10 A. Yes, sir.  
 11 Q. And it had nothing to do with any other valid  
 12 reason or good reason?  
 13 A. None that I know of.  
 14 Q. What else?  
 15 A. That's it.  
 16 Q. Okay. Now, who participated in that, it was  
 17 kept a secret?  
 18 A. I think that the participants would be the  
 19 ones that were drawing up the specs for the  
 20 job, would be Henry, Marilyn, Otha Dillihay.  
 21 Q. Anyone else?  
 22 A. That was it.  
 23 Q. The next thing you said was the announcement

Page 188

1 denied you the opportunity to apply for the  
 2 job.  
 3 A. Yes, sir.  
 4 Q. You think that fits into the conspiracy?  
 5 A. Yes, sir.  
 6 Q. Part of the conspiracy that was -- I guess  
 7 what you say was one of the objects of the  
 8 conspiracy, right?  
 9 A. Yes, sir.  
 10 Q. Why would they want to deny you the  
 11 opportunity of applying for the job? Why  
 12 would anyone want to?  
 13 A. Because Marilyn was going to get the job. She  
 14 is a black lady and I'm a white lady, and they  
 15 wanted a black person in that position  
 16 apparently.  
 17 Q. Well, let me ask you this. Weren't there  
 18 other people who applied for that job?  
 19 A. I guess so, but I haven't been given privy to  
 20 the recruitment file. I don't know who  
 21 applied. All that stuff went to Mike Mathis  
 22 at Partlow, and I did not get to look at the  
 23 file. I have not looked at the file to this

Page 189

1 day.  
 2 Q. There were other people that applied for that  
 3 job. Okay?  
 4 A. Yes, sir.  
 5 Q. As a matter of fact, you know that it was  
 6 announced twice.  
 7 A. Yes, sir.  
 8 Q. The first time for two weeks, and the second  
 9 time for four weeks right?  
 10 A. Yes, sir. The applicant pool from what I  
 11 understand was not large enough, and that  
 12 being because of the way the announcement was  
 13 written.  
 14 Q. Is there a requirement with regard to the size  
 15 of an applicant pool before the job can be  
 16 valid?  
 17 A. Not really.  
 18 Q. Not really? You could have one applicant?  
 19 A. Well, I guess you could, but we try to have --  
 20 Q. More than --  
 21 A. -- more than one.  
 22 Q. Well, let's assume -- let's just make an  
 23 assumption. Okay? The job announcement was

Deposition of Joan Owens

June 2, 2008

Page 190	Page 192
<p>1 9-15-05, and there were two, maybe three</p> <p>2 people who had applied by September 30. Okay?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Is that a large enough applicant pool to make</p> <p>5 a decision on?</p> <p>6 A. I guess you could, but it wouldn't be a very</p> <p>7 good applicant pool with two people.</p> <p>8 Q. So if it's not a good applicant pool because</p> <p>9 of the two -- the few number of people, the</p> <p>10 idea then is to --</p> <p>11 A. Re-announce.</p> <p>12 Q. Re-announce it and to do what?</p> <p>13 A. Re-announce it so that you can get a larger</p> <p>14 pool.</p> <p>15 Q. And how do you do that?</p> <p>16 A. You type up at the top of it re-announcement,</p> <p>17 and you announce it for two more weeks</p> <p>18 generally. We announce the positions for two</p> <p>19 weeks at the time.</p> <p>20 Q. Do you know where the first announcement went?</p> <p>21 A. No, sir.</p> <p>22 Q. I mean, do announcements always go to the same</p> <p>23 place or are they confined sometimes? Are</p>	<p>1 announcement?</p> <p>2 A. No, sir, I have no idea when she applied.</p> <p>3 Q. If Marilyn had applied before the time limit</p> <p>4 of the first announcement and if there was a</p> <p>5 conspiracy for her to get this job and to</p> <p>6 exclude you and Lynn, they wouldn't have</p> <p>7 re-advertised the job, would they?</p> <p>8 A. I have no idea.</p> <p>9 Q. Why would they re-advertise the job if their</p> <p>10 handpicked person has already applied?</p> <p>11 A. I don't know. I have no idea, sir.</p> <p>12 Q. Well, it doesn't make sense, does it, that</p> <p>13 they would re-advertise it -- the position?</p> <p>14 A. I don't know how many people had applied</p> <p>15 besides her. She could have been the only</p> <p>16 applicant at that time, and they wouldn't have</p> <p>17 wanted to have done it with just one applicant</p> <p>18 and that's her. That would really be a</p> <p>19 shining star. No, I don't know. I have no</p> <p>20 idea.</p> <p>21 Q. Okay. And you say the ones who wrote the</p> <p>22 announcement had access to all information.</p> <p>23 Now, what do you mean by that?</p>
Page 191	Page 193
<p>1 they restricted sometimes? Are they broad</p> <p>2 sometimes?</p> <p>3 A. I mean, we just put them out. People sign up</p> <p>4 on a computer bank like thing. If they've got</p> <p>5 qualifications, if they ask to be put on that</p> <p>6 mailing list, we'll mail stuff there. We'll</p> <p>7 mail it to different colleges and</p> <p>8 universities, and we mail them to all the</p> <p>9 facilities, so ... and some of the jobs are</p> <p>10 advertised in the paper.</p> <p>11 Q. All right. So you say the announcement denied</p> <p>12 you the opportunity to apply, and yet there</p> <p>13 were other people who did apply?</p> <p>14 A. I'm sure, yes, sir.</p> <p>15 Q. You're saying that this thing was written only</p> <p>16 so Marilyn could get the job, but there were</p> <p>17 other people who applied, right?</p> <p>18 A. I'm sure there probably were. I don't know</p> <p>19 who and how many, but I'm sure there were.</p> <p>20 Q. Do you know when Marilyn applied?</p> <p>21 A. No, sir, I don't.</p> <p>22 Q. Do you know whether she applied before the</p> <p>23 time limit for application in the first</p>	<p>1 A. Well, they knew what was going to be asked for</p> <p>2 on the announcement and what was going to be</p> <p>3 required.</p> <p>4 Also, that job specs were supposed to be</p> <p>5 taken to the Job Evaluation Committee. And</p> <p>6 according to all the minutes that I've read,</p> <p>7 the Job Evaluation Committee never approved</p> <p>8 those specs. They were never brought before</p> <p>9 the Job Evaluation Committee. The only people</p> <p>10 that knew what those specs were as far as I</p> <p>11 know was the ones that wrote them.</p> <p>12 Q. That would be who?</p> <p>13 A. That would be Henry, Dillihay, and Marilyn.</p> <p>14 The Job Evaluation is supposed to okay job</p> <p>15 specs. And I've read all the minutes, and I</p> <p>16 don't see where they okayed the job specs for</p> <p>17 this job.</p> <p>18 Q. Don't think you could have missed that?</p> <p>19 A. No, sir, I don't think I did.</p> <p>20 Q. Let me ask you this. Let's just assume you're</p> <p>21 right. I'm not agreeing that you're right,</p> <p>22 but if we assume you're right that the Job</p> <p>23 Evaluation Committee did not make specific</p>



Deposition of Joan Owens

June 2, 2008

Page 194	Page 196
<p>1 approval of these, having seen the job</p> <p>2 announcement -- if the Commissioner saw it and</p> <p>3 signed off on it, what difference does it</p> <p>4 make?</p> <p>5 A. Well, that is part of your procedures that you</p> <p>6 were asking about a while ago. Why have</p> <p>7 policies and procedures if you're not going to</p> <p>8 go by them? Why didn't they take them to the</p> <p>9 Job Evaluation Committee?</p> <p>10 Q. I'm not saying they didn't.</p> <p>11 A. Why even have the Job Evaluation Committee?</p> <p>12 Just take it all to the Commissioner. Just</p> <p>13 waylay every bit of that.</p> <p>14 Q. I'm not saying they didn't --</p> <p>15 A. That's what they did in this. They did what</p> <p>16 they wanted to, sir.</p> <p>17 Q. So you're saying that even though the</p> <p>18 Commissioner has ultimate authority, as you</p> <p>19 say, to do whatever he wants to do --</p> <p>20 A. Yes.</p> <p>21 Q. -- the fact that he might have -- I'll just</p> <p>22 say might have at this time because I don't</p> <p>23 want to get into an argument with you about</p>	<p>1 But any department or place of business</p> <p>2 that has policies and procedures and does not</p> <p>3 go by them, that is kind of foolish. That</p> <p>4 should be done. All policies and procedures</p> <p>5 should be followed, and that -- that policy</p> <p>6 and procedure was not followed. I have</p> <p>7 read --</p> <p>8 Q. You're sure of that?</p> <p>9 A. Yes, sir. I have read every one of these, all</p> <p>10 of the minutes. And it was never brought</p> <p>11 before the Job Evaluation Committee, the job</p> <p>12 specifications for this job. If it was, it is</p> <p>13 not recorded.</p> <p>14 Q. Okay.</p> <p>15 MR. MOZINGO: And since we've had</p> <p>16 the question, Chip, about</p> <p>17 whether all the Job Evaluation</p> <p>18 Committee records have been</p> <p>19 produced, if it's in a record</p> <p>20 that's not reflected in what we</p> <p>21 have -- and I gave you the list</p> <p>22 of what we have -- please let us</p> <p>23 see that immediately.</p>
Page 195	Page 197
<p>1 whether he did.</p> <p>2 But the fact that he might have seen the</p> <p>3 announcement or the spec and might have known</p> <p>4 that the spec did not have any qualification</p> <p>5 requirement in it for substitution and still</p> <p>6 approved it, that wouldn't make a bit of</p> <p>7 difference to you. It still would have had to</p> <p>8 go through the Job Evaluation Committee,</p> <p>9 right?</p> <p>10 A. I believe, in following policy and procedure.</p> <p>11 Q. In other words, you're saying that it wouldn't</p> <p>12 have mattered?</p> <p>13 MR. MOZINGO: Object to the form.</p> <p>14 Q. That the application or that the announcement</p> <p>15 and the spec if it did not go through and was</p> <p>16 approved by the Job Evaluation Committee and</p> <p>17 recommended to the Commissioner who then</p> <p>18 approved it, the fact that that procedure was</p> <p>19 not followed makes it invalid?</p> <p>20 A. Sir, the Commissioner can do anything he wants</p> <p>21 to. The governor appoints him. He is in</p> <p>22 control of the entire department, and he can</p> <p>23 do whatever he wants to.</p>	<p>1 MR. NIX: We've produced all of the</p> <p>2 Job Evaluation Committee minutes</p> <p>3 that we have. And if there are</p> <p>4 any others, I'd be surprised,</p> <p>5 because we've done a pretty</p> <p>6 exhaustive search to make sure</p> <p>7 that we got them all.</p> <p>8 I will look at your list,</p> <p>9 and I will check it or get</p> <p>10 somebody to get you -- get Juli</p> <p>11 to when she gets back. Brandy</p> <p>12 ain't coming back anytime soon</p> <p>13 I'm afraid. We're not going to</p> <p>14 see Brandy for a while. I'll</p> <p>15 get Juli to double-check it and</p> <p>16 let you know.</p> <p>17 Q. You said you made it known that you wanted to</p> <p>18 apply for the job.</p> <p>19 A. To the Acting Associate and to my immediate</p> <p>20 supervisor, Henry Ervin.</p> <p>21 Q. And you, what? Were denied the ability to</p> <p>22 apply because they would not change the spec</p> <p>23 to include substitution; is that right?</p>

Deposition of Joan Owens

June 2, 2008

Page 198

1 A. Yes, sir.  
 2 Q. And they said that they had a plan to make all  
 3 higher job level positions --  
 4 A. Henry never gave me a reason, because he got  
 5 mad and cursed me out and I left crying. But  
 6 Ms. Lynn -- and Courtney was sitting in  
 7 there -- told me they were going to start  
 8 leaving it out of all the higher-paying  
 9 positions. And that has not been left out of  
 10 not one since that day.  
 11 Q. Now, let me ask you this. Who was involved in  
 12 that part of the conspiracy?  
 13 A. The job -- I mean the -- when I went in and  
 14 asked her to change that?  
 15 Q. Yeah.  
 16 A. She knew that Dillihay was coming back at that  
 17 point in time. He was acting as the Associate  
 18 Commissioner for MI. He was on his way back,  
 19 and she told me when I walked in, her exact  
 20 words were, I can't and I won't. So she was  
 21 not going to change what Dillihay had done.  
 22 Q. Does that make her a part of the conspiracy?  
 23 A. No. I think she was doing what Dillihay had

Page 199

1 said to. And what he had done, he had made  
 2 the decision on it. She didn't have, I don't  
 3 guess, the --  
 4 Q. So who was? I really didn't ask you to defend  
 5 June. I was asking, really, as part of  
 6 that --  
 7 A. Henry, Dillihay, Benson at that point in time.  
 8 Q. Now, you've not named Commissioner Houston  
 9 anywhere. Was he a part of any conspiracy?  
 10 A. Well, if he signed off on this stuff, which is  
 11 my impression that he did, yes, he was.  
 12 Q. How so?  
 13 A. If he signed off on this stuff, not knowing  
 14 what was going on, would you not think he  
 15 would be part of it? Don't you know what goes  
 16 on in your firm?  
 17 Q. I'm not sure I understand what you're saying.  
 18 A. I'm sorry.  
 19 MR. MOZINGO: He's not sure he  
 20 understands what goes on in his  
 21 firm.  
 22 Q. If he signed off not knowing what was going  
 23 on, don't I think he was part of a conspiracy?

Page 200

1 A. Sir, if he signed off on this stuff, he is  
 2 part of the conspiracy to put someone into  
 3 that job. Yes, I do believe he was part of  
 4 it.  
 5 Q. Well, I mean, he wanted somebody in the job.  
 6 There's no question about that. The  
 7 conspiracy, though -- if there was a  
 8 conspiracy, Ms. Owens, I assume you're saying  
 9 the conspiracy was to keep you out of the job.  
 10 A. Yes, sir. Did he ever see the job specs? Do  
 11 we know whether he ever saw the job specs?  
 12 Q. I don't. I mean, I'm asking you questions.  
 13 A. Yes, sir.  
 14 Q. You have made an allegation that he was part  
 15 of a conspiracy. I just want you to tell me  
 16 what you say he did that made him part of the  
 17 conspiracy.  
 18 A. If he saw the job specs and knew what was  
 19 going on, he was part of the conspiracy.  
 20 Q. Have you ever had any personal problems with  
 21 Otha Dillihay?  
 22 A. Yes.  
 23 Q. Tell me about it.

Page 201

1 A. Right after Mr. Dillihay came, I baked a cake  
 2 and brought it to the office, which is  
 3 something that I used to do quite often. And  
 4 we were all eating a piece of cake, and  
 5 Mr. Dillihay said --  
 6 And I cannot quote word for word. I'm  
 7 telling you what I know best after this many  
 8 years.  
 9 -- if I had married you and you could  
 10 cook this good, you and I would have made a  
 11 lot of babies. Okay. I thought that it was  
 12 just a little crude, but I didn't say anything  
 13 about it.  
 14 Then the very next -- everybody started  
 15 talking. I mean, everybody was talking about  
 16 what he said. And I agreed with everybody  
 17 that he shouldn't have said it and I really  
 18 didn't like what he said, but I didn't file a  
 19 complaint. I didn't say that it was sexual  
 20 harassment. I didn't say it was hostile  
 21 harassment. I didn't say anything to him. I  
 22 thought that he was new, and I just -- I  
 23 really didn't care a lot about him saying that



Deposition of Joan Owens

June 2, 2008

Page 202	Page 204
<p>1 and I really didn't like him saying it, but I</p> <p>2 didn't say anything about it.</p> <p>3 Well, Henry met me in the hall that same</p> <p>4 day, and he put his arm around my shoulder and</p> <p>5 he said, poor old thing, he doesn't know how</p> <p>6 to give a compliment, does he? And I said,</p> <p>7 no, and I just kind of laughed.</p> <p>8 And then we met in Marilyn's office --</p> <p>9 me, Lynn, and Marilyn -- and we discussed it.</p> <p>10 We talked about it. And so I said, no, I</p> <p>11 didn't like what he said, but I was not going</p> <p>12 to follow up on it. I decided not to follow</p> <p>13 up on it. I was just going to leave it alone,</p> <p>14 just leave it alone.</p> <p>15 Well, he came to my office the next</p> <p>16 morning, and he said, I need to see you in my</p> <p>17 office. And so when I went to his office,</p> <p>18 Henry was already in there. And his</p> <p>19 administrative assistant, Linda Traywick, was</p> <p>20 in there --</p> <p>21 Q. Whose administrative assistant?</p> <p>22 A. Linda Traywick.</p> <p>23 Q. I mean, but who --</p>	<p>1 said, well, Mr. Dillihay, I did not do that</p> <p>2 and I wouldn't do it.</p> <p>3 And after that, I believe I became</p> <p>4 Mr. Dillihay's whipping horse. Every time</p> <p>5 something came up, he had something smart to</p> <p>6 say to me. And I tried very hard to become</p> <p>7 his friend, very hard. But he would have all</p> <p>8 kinds of little remarks to say to me. And as</p> <p>9 far as I know, that's the only trouble I ever</p> <p>10 had with Mr. Dillihay, and I didn't do that.</p> <p>11 Q. Have you ever had any trouble -- personal</p> <p>12 problems with Henry?</p> <p>13 A. No.</p> <p>14 Q. Any personal problems with Marilyn?</p> <p>15 A. No.</p> <p>16 Q. Any personal problems with Mr. Houston?</p> <p>17 A. No.</p> <p>18 Q. Any professional problems with Otha?</p> <p>19 A. No.</p> <p>20 Q. Any professional problems with Henry?</p> <p>21 A. No.</p> <p>22 Q. Any professional problems with Marilyn?</p> <p>23 A. No.</p>
Page 203	Page 205
<p>1 A. Otha Dillihay's.</p> <p>2 -- and Mr. Dillihay. And he told me that</p> <p>3 someone had gone to Mrs. Sawyer, which was the</p> <p>4 Commissioner at that time, and told her about</p> <p>5 the remark, and he wanted to get something</p> <p>6 straight. That he did not mean that in any</p> <p>7 type sexual terms, that he had been a married</p> <p>8 man for many years, and that he was not saying</p> <p>9 something like that to be ugly to me and that</p> <p>10 he was happy in his marriage and all this kind</p> <p>11 of stuff.</p> <p>12 And so I said, well, Mr. Dillihay, I did</p> <p>13 not go to the Commissioner and I was not going</p> <p>14 to the Commissioner. I can see where someone</p> <p>15 can see that it didn't sound quite right, but</p> <p>16 I did not go. And I looked at Henry and I</p> <p>17 said, Henry, please tell him that I would not</p> <p>18 do something like that. And Henry held up his</p> <p>19 hands, and he said, leave me out of this. I</p> <p>20 don't -- know nothing about it.</p> <p>21 Henry did know about it, too, because he</p> <p>22 had said something about it to me before. He</p> <p>23 threw me out to swim or drown. So I just</p>	<p>1 Q. Any professional problems with Commissioner</p> <p>2 Houston?</p> <p>3 A. No.</p> <p>4 Q. Have you ever had any help from Henry?</p> <p>5 A. Any what?</p> <p>6 Q. Help.</p> <p>7 A. Help?</p> <p>8 Q. Assistance. Help, assistance, work help,</p> <p>9 assistance.</p> <p>10 A. I don't know what you --</p> <p>11 Q. Were you unhappy at Greil?</p> <p>12 A. Yes, I was.</p> <p>13 Q. And wanted to come back to Central Office</p> <p>14 badly?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Did Henry help you get back?</p> <p>17 A. Well, for many years, I thought that he did.</p> <p>18 But Henry needed me as much as I needed to</p> <p>19 leave Greil, because they consolidated Greil</p> <p>20 and J. S. Tarwater, and they brought me to</p> <p>21 Central Office and saved the money of a</p> <p>22 personnel director at Greil and saved the</p> <p>23 money of a personnel director at J. S.</p>

Deposition of Joan Owens

June 2, 2008

Page 206	Page 208
<p>1 Tarwater by letting me go to Greil and</p> <p>2 Tarwater a few days a week and then come to</p> <p>3 Central Office and do my job at Central</p> <p>4 Office.</p> <p>5 Q. So how long did you think that he had helped</p> <p>6 you before you came to this revelation?</p> <p>7 A. I always told him how much I appreciated</p> <p>8 coming to Central Office, how much I</p> <p>9 appreciated working for him. But Henry</p> <p>10 received a person that already knew the ropes</p> <p>11 when he brought me in to Central Office. I</p> <p>12 already knew how to do SEICTF. I already knew</p> <p>13 how to do FMLA, ADA. I already knew how to</p> <p>14 give Mental Health worker tests, how to grade</p> <p>15 the tests, how to do disciplinary actions. So</p> <p>16 I feel that I helped Henry as well as he</p> <p>17 helped me.</p> <p>18 Q. Did he give you any other help?</p> <p>19 A. Any what?</p> <p>20 Q. Other help.</p> <p>21 A. None that I know of. He asked me one time why</p> <p>22 my husband had lost his job. And we needed a</p> <p>23 personnel director at Searcy Hospital and why</p>	<p>1 A. Yes.</p> <p>2 Q. How is that going?</p> <p>3 A. It's okay.</p> <p>4 Q. It's going okay?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Does Lynn Hubbard also report to Marilyn?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know how that seems to be going?</p> <p>9 A. As far as I know, it's okay. You'll have to</p> <p>10 ask Marilyn -- I mean Lynn.</p> <p>11 Q. Okay. Now, does anyone report to you now that</p> <p>12 did not previously report to you before?</p> <p>13 A. Yes.</p> <p>14 Q. Who is that?</p> <p>15 A. Gina Watts.</p> <p>16 Q. What is her job?</p> <p>17 A. Personnel Assistant II. She's a merit system</p> <p>18 employee.</p> <p>19 Q. How is that going?</p> <p>20 A. Good.</p> <p>21 Q. Okay. Currently, what do you think about the</p> <p>22 new structure?</p> <p>23 A. I don't like the new structure.</p>
Page 207	Page 209
<p>1 didn't I apply for that job, which is a</p> <p>2 Personnel Manager III. And I could have</p> <p>3 applied because the clause was there, but I</p> <p>4 didn't want to move to Mobile and leave my</p> <p>5 family up here.</p> <p>6 Q. When was that?</p> <p>7 A. Sir, I don't know. It was in 2002 or three,</p> <p>8 something like that. I don't know. It's been</p> <p>9 some years back.</p> <p>10 Q. What was the job?</p> <p>11 A. Personnel Manager.</p> <p>12 Q. At what facility?</p> <p>13 A. Searcy.</p> <p>14 Q. Has Marilyn ever helped you on the job?</p> <p>15 A. None that I know of.</p> <p>16 Q. Has Commissioner Houston ever helped you on</p> <p>17 the job?</p> <p>18 A. No.</p> <p>19 Q. Now, currently, who do you report to?</p> <p>20 A. Marilyn.</p> <p>21 Q. How long has that been --</p> <p>22 A. Since this past November.</p> <p>23 Q. November '07?</p>	<p>1 Q. Why not?</p> <p>2 A. Well, if Marilyn is the Assistant Personnel</p> <p>3 Director, I don't see why she can't supervise</p> <p>4 Gina. I mean, how many employees -- I've</p> <p>5 supervised 19 at one time. Why can't she</p> <p>6 supervise the Personnel office?</p> <p>7 Q. Does anybody else supervise Gina?</p> <p>8 A. No. I supervise Gina.</p> <p>9 Q. You're talking about Gina Watts?</p> <p>10 A. Yes. I don't understand. Marilyn supervises</p> <p>11 Lynn, myself, and Brooke Hogan. Why can't she</p> <p>12 supervise the other two employees? They're</p> <p>13 having me supervise one and Lynn supervise the</p> <p>14 other.</p> <p>15 Q. Have you ever heard of an organization being</p> <p>16 flat?</p> <p>17 A. No.</p> <p>18 Q. You don't know what that means?</p> <p>19 A. No.</p> <p>20 Q. Enough said.</p> <p>21 Let's do this. I'm going to go through</p> <p>22 the process of your EEOC file, your claim.</p> <p>23 Okay?</p>

Deposition of Joan Owens

June 2, 2008

Page 210	Page 212
<p>1 A. Yes, sir.</p> <p>2 Q. I'll try to do it as quick as we can. I know</p> <p>3 it's getting late. My goal is not just to</p> <p>4 keep you here for no good reason. All right?</p> <p>5 But I do need to know a few things about this.</p> <p>6 (Defendant's Exhibit 6 was marked for</p> <p>7 identification.)</p> <p>8 Q. Let me show you, Ms. Owens, this document</p> <p>9 stamped March 3, 2006, by the Birmingham</p> <p>10 office of EEOC, signed by you March 3, 2006,</p> <p>11 entitled Charge of Discrimination. Is that</p> <p>12 the charge you filed in this case?</p> <p>13 A. Yes, sir. My name is on it.</p> <p>14 Q. Does that charge set forth your complaint in</p> <p>15 this lawsuit? When I say set forth the</p> <p>16 complaint, I mean the basics, bottom line --</p> <p>17 basic bottom line facts of your complaint.</p> <p>18 A. That's just the bottom line, yes, sir.</p> <p>19 MR. MOZINGO: Very basic based upon</p> <p>20 the testimony today.</p> <p>21 Q. What happened with that claim after you filed</p> <p>22 it?</p> <p>23 A. It was investigated as far as I know.</p>	<p>1 reopen my case. I answered each one of the</p> <p>2 investigator's -- everything that they said on</p> <p>3 there.</p> <p>4 Q. It was messed up when I got it. I'm still not</p> <p>5 sure it's in order now, but hopefully it is.</p> <p>6 Who was your investigator?</p> <p>7 A. Lula Bell. Are you talking about the first</p> <p>8 time?</p> <p>9 Q. Yes.</p> <p>10 A. Lula Bell.</p> <p>11 Q. And tell me about Ms. Bell.</p> <p>12 A. Well, Mrs. Bell, when she answered and wrote</p> <p>13 back why she didn't feel that it was</p> <p>14 discrimination, she wrote exactly -- if you'll</p> <p>15 put what her answer was up next to what</p> <p>16 Courtney wrote to the EEOC, she answered it</p> <p>17 according to what he wrote. So what she did</p> <p>18 was took what he said and disregarded</p> <p>19 everything that I had said.</p> <p>20 Q. That's really not exactly what I asked you,</p> <p>21 though.</p> <p>22 A. Oh, okay.</p> <p>23 Q. Who is Lula Bell?</p>
Page 211	Page 213
<p>1 Q. Okay.</p> <p>2 A. And when I filed this, I had to fill out</p> <p>3 something on the back. I think it was a sheet</p> <p>4 that was on the back, and it asked if I would</p> <p>5 participate in mediation. And I put down that</p> <p>6 I would. And let me state that I had put that</p> <p>7 down on -- is that it?</p> <p>8 Q. I don't know. You tell me.</p> <p>9 A. Every time I have said that I would, and the</p> <p>10 Department has denied meeting with me.</p> <p>11 I signed it that I would.</p> <p>12 Q. The matter -- your claim was investigated; is</p> <p>13 that correct?</p> <p>14 A. Yes, it was.</p> <p>15 Q. And then was there a determination made on</p> <p>16 that claim --</p> <p>17 A. Yes, there was.</p> <p>18 Q. -- or that charge?</p> <p>19 What was it?</p> <p>20 A. The determination said that there was not</p> <p>21 grounds for discrimination.</p> <p>22 If you've got my EEOC file, you can see</p> <p>23 where when I wrote back and asked them to</p>	<p>1 A. She works for the EEOC. She's an investigator</p> <p>2 as far -- that's the best I know.</p> <p>3 Q. Did you ever meet with her?</p> <p>4 A. Never.</p> <p>5 Q. Did you speak with her?</p> <p>6 A. On the phone.</p> <p>7 Q. How many times?</p> <p>8 A. Sir, I don't know. Once or twice. I'm under</p> <p>9 oath, and just to be very honest, I cannot say</p> <p>10 how many times. Once or twice, at the most</p> <p>11 three times, because she wouldn't call me</p> <p>12 back.</p> <p>13 Q. Is she black or white?</p> <p>14 A. She's black.</p> <p>15 (Defendant's Exhibit 7 was marked for</p> <p>16 identification.)</p> <p>17 Q. Show you Defendant's Exhibit 7. Ask you to</p> <p>18 tell me what that is.</p> <p>19 A. This is where she is saying that I did not</p> <p>20 have a case of discrimination.</p> <p>21 Q. That's a letter -- Exhibit 7 is a letter from</p> <p>22 Lula Bell, a black investigator with EEOC?</p> <p>23 A. Yes, sir.</p>

Deposition of Joan Owens

June 2, 2008

Page 214	Page 216
<p>1 Q. Letter dated July 10, 2006?</p> <p>2 A. Yes.</p> <p>3 Q. Talking about her investigation, her finding</p> <p>4 that in her view, there was no cause to</p> <p>5 proceed, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Now, when you got that, what did you do?</p> <p>8 A. I turned around and wrote -- I think it was</p> <p>9 the -- I wrote Atlanta -- I believe it was</p> <p>10 Atlanta or either Washington, D.C. and asked</p> <p>11 that my case be reopened.</p> <p>12 If you'll read in this where she -- she</p> <p>13 said that it was being dismissed, she said</p> <p>14 that the Job Evaluation Committee affirmed</p> <p>15 that substitution should not be allowed in</p> <p>16 higher-level professional positions. This</p> <p>17 position they never -- I've already testified</p> <p>18 that they never approved the specifications in</p> <p>19 it, so therefore she did not even read the Job</p> <p>20 Evaluation Committee minutes.</p> <p>21 She also I believe in the letter says</p> <p>22 that -- something to do with the merit</p> <p>23 system. And the merit system has nothing to</p>	<p>1 A. I don't know. I don't see a date on it.</p> <p>2 Q. It's down at the bottom, I think, or it may</p> <p>3 be ... well, there's a fax designation on it</p> <p>4 that says September 26, 2006.</p> <p>5 A. That very well could be it. I don't know.</p> <p>6 But I did write him at the advice of this</p> <p>7 lady's supervisor.</p> <p>8 Q. Okay.</p> <p>9 A. She asked me to write --</p> <p>10 Q. At the advice of Lula Bell's supervisor?</p> <p>11 A. Lula Bell's supervisor.</p> <p>12 -- write the attorney.</p> <p>13 Q. Who was Lula Bell's supervisor?</p> <p>14 A. I knew you were going to ask me that, and I</p> <p>15 have forgotten. Veneda Jordan I think is her</p> <p>16 name.</p> <p>17 Q. Is she in Birmingham?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. And then after you wrote this</p> <p>20 letter --</p> <p>21 A. And didn't get a response.</p> <p>22 Q. What did you do then?</p> <p>23 A. That's when I wrote -- I think it was Atlanta,</p>
Page 215	Page 217
<p>1 do with the exempt system.</p> <p>2 So she did not -- she did not -- it</p> <p>3 doesn't seem to me that she even read my</p> <p>4 allegations. She just took Courtney's</p> <p>5 response and denied my claim, and that's what</p> <p>6 I told the EEOC and asked that it be</p> <p>7 re-investigated -- reopened.</p> <p>8 (Defendant's Exhibit 8 was marked for</p> <p>9 identification.)</p> <p>10 Q. Let me show you what's been marked as</p> <p>11 Defendant's Exhibit 8. Tell me what that is,</p> <p>12 please, ma'am.</p> <p>13 A. This is where after talking with this lady's</p> <p>14 supervisor --</p> <p>15 Q. Which lady?</p> <p>16 A. Lula Bell's supervisor, she advised me to</p> <p>17 write this attorney, which he never wrote me</p> <p>18 back either.</p> <p>19 Q. A lawyer there in Birmingham?</p> <p>20 A. He's with the EEOC.</p> <p>21 Q. What's his name?</p> <p>22 A. Emanuel Smith.</p> <p>23 Q. What's the date of that letter you wrote?</p>	<p>1 or either Washington, wherever. I believe</p> <p>2 that's what I did.</p> <p>3 (Defendant's Exhibit 9 was marked for</p> <p>4 identification.)</p> <p>5 Q. Let me show you Defendant's Exhibit Number 9.</p> <p>6 I do not see a date on this. I don't see</p> <p>7 one. Exhibit 9. What is that?</p> <p>8 A. This is a letter that I wrote to Bernice</p> <p>9 Williams-Kimbrough, the District Director.</p> <p>10 This was to Atlanta. And this is where I</p> <p>11 broke down Mrs. Bell's letter and refuted</p> <p>12 everything that she said and asked that my</p> <p>13 case be reopened because it was apparent that</p> <p>14 Mrs. Bell did not investigate my claims.</p> <p>15 Q. She was, what? Biased or --</p> <p>16 A. I don't know what -- I don't know if she just</p> <p>17 didn't do her job. I don't know what was</p> <p>18 wrong with her. But you could tell by the</p> <p>19 letter that she wrote that she had not read my</p> <p>20 claim. All she did was read Courtney's.</p> <p>21 That's easy to see.</p> <p>22 Q. Did you send any attachments with the letter</p> <p>23 to that lady, Exhibit -- Defendant's Exhibit</p>



Deposition of Joan Owens

June 2, 2008

Page 218	Page 220
<p>1 9?</p> <p>2 A. I probably did. I don't know. I can't swear,</p> <p>3 but I probably -- yes. See here, it says see</p> <p>4 attachments. So, yes, I sent attachments.</p> <p>5 Q. How many?</p> <p>6 A. I don't know, sir.</p> <p>7 Q. You don't say in the letter?</p> <p>8 A. Well, I put down here, it says Personnel</p> <p>9 Manager IV, class specifications, Attachment</p> <p>10 14. Personnel Manager III, class</p> <p>11 specifications, Attachment 13. I can go</p> <p>12 through here and count them all up for you.</p> <p>13 Q. Wouldn't the highest number be at the end of</p> <p>14 the letter?</p> <p>15 A. Maybe so.</p> <p>16 MR. MOZINGO: I know you've got all</p> <p>17 of those attachments. I can see</p> <p>18 them in front of you. Are you</p> <p>19 going to ask her if those are</p> <p>20 it? Is this some kind of test?</p> <p>21 MR. NIX: No.</p> <p>22 And by the way, in going</p> <p>23 through this EEOC file -- I</p>	<p>1 earlier, Exempt Classification and Pay Plan</p> <p>2 Distribution that you wanted to know about,</p> <p>3 this is what one looks like. And it's</p> <p>4 supposed to --</p> <p>5 Q. That's it right there?</p> <p>6 A. Yes, sir. That's what they're supposed to</p> <p>7 look like when we get them.</p> <p>8 Q. And that's what you say you never got?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Let me see it just a minute. The record has</p> <p>11 to be clear. Is that it?</p> <p>12 A. Yes. See, it's got a number on it.</p> <p>13 Q. I'm referring in Defendant's Exhibit 10 under</p> <p>14 attachment three to a May 15, 2005, document.</p> <p>15 A. It's just to show you what they look like.</p> <p>16 Q. Right. Exempt Classification Pay Plan</p> <p>17 Distribution Number 74. That's what you're</p> <p>18 talking about you never received?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So these look like the exhibits, and then --</p> <p>21 (Defendant's Exhibit 11 was marked</p> <p>22 for identification.)</p> <p>23 MR. MOZINGO: Can I state this for</p>
Page 219	Page 221
<p>1 don't mean to imply that I think</p> <p>2 it's admissible. I'm simply</p> <p>3 trying to identify correctly</p> <p>4 what was sent. Okay?</p> <p>5 MR. MOZINGO: Sure.</p> <p>6 A. The best I can -- the highest number I see in</p> <p>7 here is 20. It could be different. It's 20</p> <p>8 minutes till 5:00, and my eyes are running</p> <p>9 together.</p> <p>10 Q. Do you mean literally running together? Like</p> <p>11 which one is winning? I'm kind of getting</p> <p>12 silly myself as you can tell.</p> <p>13 I see 21. I see a number 21.</p> <p>14 A. Well, I'll agree with you.</p> <p>15 (Defendant's Exhibit 10 because</p> <p>16 marked for identification.)</p> <p>17 Q. Let me do this. Ms. Owens, let me give you a</p> <p>18 packet of materials consisting of 21</p> <p>19 attachments that I am marking as Exhibit 10</p> <p>20 and asking if those are the attachments which</p> <p>21 you sent with the letter which is Exhibit 9.</p> <p>22 A. Sir, it looks like what I would probably have</p> <p>23 sent. And you know that, that I referred to</p>	<p>1 the record, something about that</p> <p>2 last statement. What you just</p> <p>3 referred to is an example of</p> <p>4 what she never received?</p> <p>5 MR. NIX: It's an example with</p> <p>6 respect to this particular job.</p> <p>7 That's right. Thank you very</p> <p>8 much. That's why you're here,</p> <p>9 make sure I'm straight. Late in</p> <p>10 the day.</p> <p>11 Q. Let me show you Exhibit 11. What is that?</p> <p>12 A. Yes, I got this.</p> <p>13 Q. What is it?</p> <p>14 A. Notice of Intent to Reconsider.</p> <p>15 Q. Does that have a date on there?</p> <p>16 A. Yes. October the 5th, 2006.</p> <p>17 Q. Let me ask you a question. When you sent the</p> <p>18 material that you sent to the EEOC, whether</p> <p>19 they were in Birmingham or Atlanta, did you</p> <p>20 send a copy of that material to Courtney</p> <p>21 Tarver, the counsel for Mental Health?</p> <p>22 A. No, I did not.</p> <p>23 Q. Why not?</p>

Deposition of Joan Owens

June 2, 2008

Page 222

1 A. I didn't think I needed to send him a copy of  
2 it.  
3 Q. Okay.  
4 A. It was going to the department of the EEOC.  
5 Q. Once you got this notice which is Defendant's  
6 11, what did you do?  
7 A. I guess I waited for them to do the  
8 investigation as best I know.  
9 Q. And the next thing you got back was a change  
10 in the finding, is that right, or was there  
11 anything in between there?  
12 A. I think I talked with that Sherry Guenster  
13 maybe once or twice. I don't know. I don't  
14 know.  
15 Q. Sherry Guenster being the person at  
16 Birmingham?  
17 A. Yes, sir. I think I talked to her on one  
18 occasion. I'm not sure.  
19 Q. After you made the submission to Atlanta with  
20 the 21 attachments, did you submit anything in  
21 addition to that, anything else?  
22 A. Sir, I don't recall.  
23 Q. How did you know that you had the ability to

Page 223

1 seek a rehearing or appeal?  
2 A. Sir, I was the person that took care of EEOC's  
3 with the Department for many years. I took  
4 care of EEOC claims when I was at J. S.  
5 Tarwater. I also took care of EEOC claims at  
6 Greil, and I have worked with the EEOC since  
7 I've been at Central Office.  
8 Q. When you wrote the letter to the lady in  
9 Atlanta, Ms. -- what's her name? Here. I'll  
10 get it. Her name is Bernice  
11 Williams-Kimbrough.  
12 Before you wrote to Ms. Kimbrough, did  
13 you know what response Mental Health had made  
14 to your claim?  
15 A. Well, Lula Bell had written and told me  
16 that -- that -- I think she read to me on the  
17 phone, if I'm not mistaken -- I don't know. I  
18 don't know how -- I don't know if I got those  
19 records then or if she read to me what  
20 Courtney had said. I know that she read to me  
21 some, and I know I received some papers, but  
22 I'm sorry. I have forgotten a lot of this  
23 stuff since then. But I do know that I wrote

Page 224

1 to Ms. Bernice and asked her.  
2 Q. But you don't think you ever saw the filings  
3 that Courtney had made?  
4 A. I think they -- I think I sent and they gave  
5 them to me -- I don't know. I don't want to  
6 testify to that, how I had all of them. But  
7 you know the EEOC, if you pay them, they'll  
8 give you copies of all that.  
9 Q. Did you ever talk with anyone in the legal  
10 department about the filing of the EEOC --  
11 that Mental Health made to EEOC?  
12 A. No, I did not.  
13 MR. MOZINGO: Legal department? I  
14 don't know who you're referring  
15 to.  
16 MR. NIX: I'm sorry. Did I not say  
17 Mental Health?  
18 MR. MOZINGO: No.  
19 MR. NIX: I'm sorry.  
20 Q. Did you ever talk with anyone at the legal  
21 department at Mental Health --  
22 A. I have never talked to the people because  
23 that's not right to do that.

Page 225

1 Q. Okay. So the answer is no?  
2 A. The answer is no.  
3 Q. Okay. Do you know whether EEOC provided to  
4 the legal department at Mental Health a copy  
5 of what you had filed seeking a rehearing?  
6 A. No, sir, I don't know what they gave Courtney.  
7 Q. Okay.  
8 A. I have no idea. Let me -- I may have told an  
9 untruth here. When it was all over with, I  
10 paid money and got my entire file from the  
11 EEOC. So I've probably seen it. But when it  
12 was going on at the exact time, no, I don't  
13 know what he did. But I sent EEOC a check,  
14 and they sent me the entire file at the very  
15 end.  
16 Q. Okay.  
17 A. I hope I said that right.  
18 Q. Let me make sure I understand it. Okay?  
19 You're saying that up until the case was  
20 completely finished with EEOC, you had not  
21 seen anything filed by Courtney Tarver for the  
22 Department of Mental Health; is that right?  
23 A. No. I believe that EEOC sent me a copy of



Deposition of Joan Owens

June 2, 2008

Page 226	Page 228
<p>1 what he sent to them. I'm almost sure of it</p> <p>2 because I was able to answer that, because I</p> <p>3 asked -- I asked for the ...</p> <p>4 Q. EEOC sent you a copy of what --</p> <p>5 A. You have to pay for all this stuff.</p> <p>6 Q. Right. But EEOC sent you a copy of what</p> <p>7 Courtney had filed?</p> <p>8 A. Yes.</p> <p>9 Q. And this was?</p> <p>10 A. After Lula Bell had done her determination. I</p> <p>11 think I've got that sequence -- if you're</p> <p>12 trying to say that I got it from Mental</p> <p>13 Health, I did not get anything from Mental</p> <p>14 Health.</p> <p>15 Q. I'm not implying anything. I'm just trying to</p> <p>16 find out. I'm really not implying anything.</p> <p>17 A. I did not get anything from Mental Health.</p> <p>18 Q. But did you get something? You got --</p> <p>19 A. Yes, sir. I had to have gotten it, but I</p> <p>20 don't remember when. But I had to have gotten</p> <p>21 it from the EEOC because I did not get it from</p> <p>22 Courtney or from Mental Health, no.</p> <p>23 Q. Okay. But are you saying you got what</p>	<p>1 A. Yes, sir, it does, from Lula Bell.</p> <p>2 Q. Defendant's 7.</p> <p>3 A. Yes, sir. Those two go together.</p> <p>4 Q. All right. I'd like to ask you -- or like to</p> <p>5 state the names of some people. I would like</p> <p>6 for you to tell me who they are.</p> <p>7 Kathleen Brantley.</p> <p>8 A. Kathleen Brantley is the Chief Financial</p> <p>9 Officer for the Department of Mental Health.</p> <p>10 Q. She's listed on a preliminary witness list</p> <p>11 that was submitted by your lawyer. Do you</p> <p>12 know why?</p> <p>13 A. No, sir.</p> <p>14 Q. But she's the Chief Financial Officer?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Department of Mental Health.</p> <p>17 Charles Day?</p> <p>18 A. Charles Day. He did work at Central Office,</p> <p>19 but now he works at Bryce Hospital. And I</p> <p>20 don't know exactly what his title is.</p> <p>21 Q. Do you know why he's listed as a potential</p> <p>22 witness?</p> <p>23 A. No.</p>
Page 227	Page 229
<p>1 Courtney filed after Lula Bell made her</p> <p>2 determination of no cause?</p> <p>3 A. That's right, because if --</p> <p>4 Q. And before you filed your letter requesting a</p> <p>5 rehearing?</p> <p>6 A. Yes, because if you'll see, everything he said</p> <p>7 I was able to refute it in my letter to that</p> <p>8 Bernice Kimbrough.</p> <p>9 Q. That occurred to me.</p> <p>10 A. And I promise you, and I'm under oath. I did</p> <p>11 not get anything from Mental Health. I did</p> <p>12 not get anything out of Courtney's office nor</p> <p>13 talk to anyone up there.</p> <p>14 (Defendant's Exhibit 12 was marked</p> <p>15 for identification)</p> <p>16 Q. Let me show you what's marked as Defendant's</p> <p>17 Exhibit 12 dated July 10, 2006, which purports</p> <p>18 to be a dismissal and right to sue letter</p> <p>19 signed by Lula Bell -- well, maybe not signed</p> <p>20 by her, but written by her.</p> <p>21 A. That was her investigation and findings.</p> <p>22 Q. That corresponds to the letter I previously</p> <p>23 introduced, does it not?</p>	<p>1 Q. Do you know why Kathy Thompson is listed as a</p> <p>2 potential witness?</p> <p>3 A. No. I just know she takes care of the EEOC</p> <p>4 claims in legal is all I know, and I've worked</p> <p>5 on her with them. But I don't know why she's</p> <p>6 listed in this unless she did a reply maybe or</p> <p>7 something.</p> <p>8 Should I just be saying yes or no?</p> <p>9 Q. You're doing a good job.</p> <p>10 Beverly Hinton. It says Beverly Hinton,</p> <p>11 U.S. Equal Employment Opportunity Commission,</p> <p>12 Birmingham.</p> <p>13 A. Her name was on one of those papers.</p> <p>14 THE WITNESS: I need to be excused</p> <p>15 again for just a moment.</p> <p>16 (Brief recess was taken.)</p> <p>17 (Defendant's Exhibit 13 was marked</p> <p>18 for identification.)</p> <p>19 Q. Ms. Owens, let me show you what I've marked as</p> <p>20 Defendant's 13 to your deposition. What is</p> <p>21 that?</p> <p>22 A. That's the announcement log for 2005.</p> <p>23 Q. What is an announcement log?</p>

Page 230

1 A. It's where when a job is being announced, the  
 2 classification is written down, facility, the  
 3 PCQ number, the announcement number, and the  
 4 closing date so that we can keep up with  
 5 what's open and the numbers that's been  
 6 assigned. Like, you know, you asked me a  
 7 while ago about what that number was ...  
 8 Q. Who keeps that log?  
 9 A. Marilyn Benson did then, I think it was, but  
 10 now Brooke does. And the numbers are written  
 11 down in it. I think it's kept on computer  
 12 now, too.  
 13 MR. MOZINGO: Can I see it if you're  
 14 not going to ask her a question?  
 15 MR. NIX: I'm going to look at it  
 16 while I ask her a question.  
 17 MR. MOZINGO: Sorry. I didn't know  
 18 if you were taking it away from  
 19 me for good.  
 20 MR. NIX: That's what I was doing.  
 21 I was trying to keep you from  
 22 realizing it.  
 23 MR. MOZINGO: Too late. I realized

Page 231

1 it.  
 2 Q. Since you filed your EEOC complaint, have you  
 3 experienced any retaliation?  
 4 A. Yes, I do feel like I have.  
 5 Q. Do you?  
 6 A. Yes.  
 7 Q. Like what?  
 8 A. One thing, being put under Marilyn's  
 9 supervision directly, I think that's in your  
 10 face. They know I filed the complaint, and I  
 11 think that it's an in-your-face situation that  
 12 that's been done. I think I should still be  
 13 under Mr. Ervin's supervision.  
 14 I can tell you this. If I was the person  
 15 in charge, I would have someone under my  
 16 supervision that had filed a complaint rather  
 17 than putting them under the supervision that  
 18 the person was complaining about.  
 19 Q. Anything else?  
 20 A. No.  
 21 Q. But, still, the working relationship is going  
 22 okay?  
 23 A. Yes, sir.

Page 232

1 Q. How have you treated others there since you  
 2 filed --  
 3 A. I think I've treated others fairly, nice.  
 4 I've done everything that Mrs. Benson has  
 5 asked me to do.  
 6 Q. Tell me every discussion you've had between  
 7 you and Ms. Hubbard about any of this, any  
 8 aspect of this.  
 9 MR. MOZINGO: I'm going to object to  
 10 the extent that your question  
 11 calls for any discussion that  
 12 she and Ms. Hubbard may have had  
 13 with joint counsel to the extent  
 14 that calls for attorney-client  
 15 privilege.  
 16 Q. If y'all were meeting with Mr. Mazingo, then  
 17 there's a privilege that attaches to that.  
 18 Don't tell me about that. Okay? Don't tell  
 19 me about that conversation. But if you've had  
 20 any independent conversations --  
 21 A. Sir, I can't recall every time I've ever  
 22 spoken to her about this.  
 23 Q. Well, can you recall any time you've spoken to

Page 233

1 her about this?  
 2 A. I mean, if I sat here and tried to tell you  
 3 every time I've talked to her, that would --  
 4 there's no way I can do that. Yes, I've  
 5 talked to her. I've talked to her on many  
 6 occasions about it because the two of us are  
 7 into this together. But as far as being able  
 8 to tell you every time, I can't do that.  
 9 Q. Well, tell me the first time you remember.  
 10 A. The very first time?  
 11 Q. First time you remember.  
 12 A. Probably the first time I remember any of this  
 13 is Lynn asked me if I knew that the position  
 14 was being created back when she heard from  
 15 across the street that it was. That was  
 16 probably the first time that Lynn and I ever  
 17 said anything about it, because I didn't know  
 18 what was going on and she didn't either. So  
 19 that was probably the very first time we  
 20 talked about it.  
 21 Q. When she received that telephone call?  
 22 A. Yes, sir.  
 23 Q. Did y'all say anything else other than --

Deposition of Joan Owens

June 2, 2008

Page 234	Page 236
<p>1 A. She said that she was going to ask about it, 2 and she did. And I think both of us decided 3 we were going to apply for it. 4 Q. And that's all that was said then that you can 5 recall? 6 A. At that point in time, yes. There was nothing 7 to say. We didn't know anything but just what 8 we found out from across the street, that a 9 position was being formulated. 10 Q. And both of you would apply? 11 A. Yes. 12 Q. All right. When was the next time? 13 A. When was the next time? I don't know. I 14 don't know. 15 Q. Well, I mean, the next time you remember. 16 A. Do you want me to just pull something out of 17 the air? 18 Q. Well, I want you to tell me what you remember. 19 A. Probably when we got out of the meeting, we 20 talked about it. I don't know. 21 Q. Got out of what meeting? 22 A. The meeting where she asked Henry about it. 23 Q. The staff meeting?</p>	<p>1 crying. And we talked at length at that point 2 in time about it and why he was being the way 3 he was, and she -- she tried to assure me and 4 make me feel better. 5 Q. What did she say? 6 A. Well, she just said, you know, don't take it 7 to heart and don't worry about it. You know 8 how Henry is. That was about it. 9 Q. What's the next time you remember talking to 10 her? 11 A. The day that Henry announced that Marilyn was 12 going into the job, that coming weekend I told 13 her that I was going to file at the EEOC, and 14 I took off and went and filed it. 15 Q. Okay. 16 A. I filed mine first, and she filed hers second. 17 Q. So the announcement was made November 15, 18 2005? 19 A. Yes. 20 Q. Neither of y'all filed an application? Did 21 you file an application for that job? 22 A. Would you have when two people had told you 23 that you couldn't apply? And that was</p>
Page 235	Page 237
<p>1 A. Yes, sir. 2 Q. Do you remember anything about that 3 conversation? 4 A. Just that it was being -- they were going to 5 have the position is all I remember. Sir, 6 this has been since 2005. 7 Q. I realize that. I'm not asking you to tell me 8 things you don't remember. 9 A. I'm under oath, and I take that seriously. I 10 don't want to tell you an untruth. 11 Q. I take it seriously, too, Ms. Owens. I just 12 want you to tell me what you do remember. If 13 you don't remember something, you can tell me 14 that. But if you do remember something, I 15 need for you to tell me. 16 MR. MOZINGO: If you don't remember, 17 tell him you don't remember. 18 A. I don't remember the next time we talked about 19 it. 20 Q. Do you remember any other time that you and 21 Ms. Hubbard talked about it? 22 A. I can tell you one time is when I went into 23 Henry's office and he cursed me and I came out</p>	<p>1 Ms. Lynn and Henry Ervin. He told me that I 2 was uneducated. 3 Q. He didn't tell you you couldn't apply? 4 A. No, but why apply when you go and ask them to 5 change it and you know you're not going to 6 qualify? You're wasting your time. I've 7 worked in personnel long enough to know that 8 if you don't qualify, why put in an 9 application? I went to two different people 10 and asked them to fix it so I would qualify. 11 Q. But you did not apply? 12 A. No. 13 Q. So 9-15-2005, you did not speak to Ms. Hubbard 14 about this matter? 15 A. Yes, I probably did. I probably -- I think I 16 told her, I'm going to talk to June Lynn about 17 this. Yes, and I told you that I also talked 18 to her when I came out of Henry's office 19 crying. She saw me crying. Becky saw me 20 crying. I was shaken up pretty bad. I mean, 21 have you ever had your employer cuss you? 22 Q. Let me ask this. You said you did speak to 23 Ms. Hubbard when you came out of Henry's</p>

Page 238	Page 240
<p>1 office crying. I think you had already told</p> <p>2 me that.</p> <p>3 A. Yes.</p> <p>4 Q. Did you speak to her at any other time that</p> <p>5 day? Ms. Hubbard.</p> <p>6 A. I may have told her -- I'm not for sure --</p> <p>7 that I was going to talk with June Lynn. I do</p> <p>8 not know.</p> <p>9 Q. Now, after September 15, '05, did you talk</p> <p>10 with her?</p> <p>11 A. I'm sure I did, but I don't recall the</p> <p>12 conversation.</p> <p>13 Q. Did you talk with her after the deadline</p> <p>14 passed for application, September 30?</p> <p>15 A. I probably did.</p> <p>16 Q. Do you remember anything that was said?</p> <p>17 A. No, sir, I don't.</p> <p>18 Q. Did you talk with her when the next</p> <p>19 announcement came out or at any time close to</p> <p>20 that?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you talk with her -- did you get a copy of</p> <p>23 that second announcement?</p>	<p>1 Guenster.</p> <p>2 Q. That's the second one?</p> <p>3 A. Yes, sir, because the first one said I didn't</p> <p>4 have a claim, so there was no need to see an</p> <p>5 attorney.</p> <p>6 Q. Well, it said you had a right to sue.</p> <p>7 A. Yes, but it also said there was nothing found.</p> <p>8 Q. Did you ever meet with Sherry Guenster?</p> <p>9 A. No, sir. I talked with her on the phone.</p> <p>10 Q. Did you talk with her during the day on the</p> <p>11 phone?</p> <p>12 A. Did I do what?</p> <p>13 Q. Talk with Ms. Guenster on the telephone during</p> <p>14 the day.</p> <p>15 A. Yes, I did.</p> <p>16 Q. Did you use the Department telephone?</p> <p>17 A. Yes.</p> <p>18 Q. On Department time?</p> <p>19 A. Yes, sir.</p> <p>20 Q. How does the Department work? I mean, is it a</p> <p>21 toll-free number? Is it a pay number? How</p> <p>22 does that work?</p> <p>23 A. I think it's an ATNET number. But if I'm not</p>
Page 239	Page 241
<p>1 A. I don't recall. They were there. They were</p> <p>2 right in front of my office, the thing that we</p> <p>3 keep them in. I could have gotten one or I</p> <p>4 could not have gotten one.</p> <p>5 Q. Did you know it had been announced for a</p> <p>6 second time?</p> <p>7 A. Yes, I did.</p> <p>8 Q. And neither you nor Ms. Hubbard spoke with the</p> <p>9 other about the fact that it had been</p> <p>10 announced for a second time?</p> <p>11 A. I don't recall. I could have.</p> <p>12 Q. May or may not have? You just don't remember?</p> <p>13 A. No, sir, I don't remember.</p> <p>14 Q. And then when the job was awarded to Marilyn,</p> <p>15 did y'all talk? You and Ms. Hubbard.</p> <p>16 A. When we were called in on a staff meeting</p> <p>17 afterwards, I told her I was filing an EEOC.</p> <p>18 Q. Told Ms. Hubbard that?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Now, had you seen a lawyer prior to that time?</p> <p>21 A. No, I had not.</p> <p>22 Q. When did you first see a lawyer?</p> <p>23 A. After I got the right to sue from Sherry</p>	<p>1 mistaken, Ms. Guenster called me when she did</p> <p>2 her finding that day.</p> <p>3 Q. What about any other time? Did you call the</p> <p>4 Birmingham office?</p> <p>5 A. Yes, I have.</p> <p>6 Q. From your office at Mental Health?</p> <p>7 A. Yes.</p> <p>8 Q. Tell me again how the charges work on that.</p> <p>9 A. It's an ATNET line.</p> <p>10 Q. ATNET?</p> <p>11 A. I think that's what they call it. And you can</p> <p>12 dial an eight and a one and call the number.</p> <p>13 Q. Eight, one, plus number. Does that cost the</p> <p>14 State or the Department of Mental Health</p> <p>15 anything when you do that?</p> <p>16 A. I would imagine it does. Are you trying to</p> <p>17 imply that a person if they've been</p> <p>18 discriminated against can't get in touch with</p> <p>19 the EEOC?</p> <p>20 Q. Let me ask you this. Did you ever use the fax</p> <p>21 machine?</p> <p>22 A. Yes, I did.</p> <p>23 Q. At the Department?</p>



Deposition of Joan Owens

June 2, 2008

Page 242	Page 244
<p>1 A. Yes.</p> <p>2 Q. Does that cost money?</p> <p>3 A. I would imagine it does.</p> <p>4 Q. And, of course, we know you used your computer</p> <p>5 there at the Department, correct?</p> <p>6 A. To do what? I never faxed -- no, I didn't use</p> <p>7 the computer.</p> <p>8 Q. You didn't use your computer at work at all?</p> <p>9 A. I had been on the EEOC Web site, but not --</p> <p>10 because I was the EEOC officer. I have never</p> <p>11 e-mailed anything to the EEOC.</p> <p>12 Q. Have you ever typed anything on your computer</p> <p>13 related to this case?</p> <p>14 A. Yes, I have.</p> <p>15 Q. What was that?</p> <p>16 A. I think I've typed my experience. My</p> <p>17 experience starting with ...</p> <p>18 Q. Anything else?</p> <p>19 A. I've typed a letter to the EEOC on my</p> <p>20 computer.</p> <p>21 Q. Anything else?</p> <p>22 A. I think that's it. I've typed a letter to the</p> <p>23 EEOC ... yeah, I think I've named everything.</p>	<p>1 Q. Any other relatives?</p> <p>2 A. I have three children.</p> <p>3 Q. Do they live in this area?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Who are they?</p> <p>6 A. Paula Westbrook.</p> <p>7 Q. Who else?</p> <p>8 A. Kimberly Sheridan.</p> <p>9 Q. Who else?</p> <p>10 A. And Matthew Owens.</p> <p>11 Q. Where do they live? Do they live in</p> <p>12 Montgomery County or Elmore County?</p> <p>13 A. Elmore County.</p> <p>14 Q. All three of them?</p> <p>15 A. No, Kim lives in Autauga County. She lives in</p> <p>16 Prattville.</p> <p>17 Q. Paula Westbrook lives until Elmore County?</p> <p>18 A. Yes.</p> <p>19 Q. And Matthew?</p> <p>20 A. Elmore.</p> <p>21 Q. Does Paula work?</p> <p>22 A. One day a week with the Department of</p> <p>23 Agriculture, State of Alabama.</p>
Page 243	Page 245
<p>1 Q. Have you used any other person's computer at</p> <p>2 Mental Health --</p> <p>3 A. No.</p> <p>4 Q. -- to type anything about this?</p> <p>5 A. No.</p> <p>6 Q. Do you have family in this area?</p> <p>7 A. Yes.</p> <p>8 Q. Tell me who they are, please.</p> <p>9 A. I have a husband. His name is Paul Owens, and</p> <p>10 he lives at my address in Wetumpka.</p> <p>11 Q. Okay. Where does he work?</p> <p>12 A. He's retired, but he has a part-time job at</p> <p>13 McGehee Road Super Foods.</p> <p>14 Q. Before he retired, where did he work?</p> <p>15 A. MBM Corporation.</p> <p>16 Q. Who?</p> <p>17 A. MBM Corporation.</p> <p>18 Q. MBM? Is that in Elmore County?</p> <p>19 A. No, it's here in Montgomery on the Western</p> <p>20 Boulevard.</p> <p>21 Q. What did he do for them?</p> <p>22 A. He was a buyer. He was a buyer for, like, Red</p> <p>23 Lobster, Olive Garden.</p>	<p>1 Q. Is she married?</p> <p>2 A. Yes.</p> <p>3 Q. What's her husband's name?</p> <p>4 A. Donald Westbrook.</p> <p>5 Q. What does he do?</p> <p>6 A. He's a roofer.</p> <p>7 Q. Kimberly Sheridan, what does she do?</p> <p>8 A. She works with her husband at a trucking</p> <p>9 company.</p> <p>10 Q. What trucking company?</p> <p>11 A. TST Trucking.</p> <p>12 Q. TST?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What's her husband's name?</p> <p>15 A. Todd.</p> <p>16 Q. Todd?</p> <p>17 A. Todd Sheridan.</p> <p>18 Q. And then Matthew, what does he do?</p> <p>19 A. Alabama Power.</p> <p>20 Q. Is he married?</p> <p>21 A. Yes. His wife's name is Jessica Owens.</p> <p>22 Q. What does she do?</p> <p>23 A. She works with -- I think it's oral surgeons.</p>

Deposition of Joan Owens

June 2, 2008

Page 246

1 I think that's what they are. Oral surgeons.  
 2 I think they're located on Carmichael, I  
 3 think.  
 4 Q. All right. Don't tell her about me. I've got  
 5 one more trip there.  
 6 (Off-the-record discussion.)  
 7 A. She travels.  
 8 Q. Oh, does she?  
 9 A. Uh-huh. (Positive response.) She goes to  
 10 Auburn, Prattville, Troy with some -- I don't  
 11 know.  
 12 Q. They've got offices all over the place.  
 13 Do you have any other relatives around  
 14 here?  
 15 A. I have two brothers.  
 16 Q. Who are they?  
 17 A. Jack and Charles Faulk, and they're both  
 18 retired. One lives in Elmore County, and one  
 19 lives in Lee County.  
 20 Q. Jack and Charles?  
 21 A. Uh-huh. (Positive response.) F-A-U-L-K.  
 22 Q. One lives where and one lives where?  
 23 A. Jack lives in Elmore County, and Charles lives

Page 247

1 in Lee County. And they're both retired.  
 2 Q. Anyone else?  
 3 A. Joyce is with Jack, and Charles is with  
 4 Connie, and neither one of them work.  
 5 Q. Joyce and Connie?  
 6 A. Yes.  
 7 Q. Any other relatives?  
 8 A. Is that as far back as you want?  
 9 Q. We're on brothers right now?  
 10 A. Yes, sir.  
 11 Q. Do you have any aunts or uncles that are still  
 12 kicking -- living I mean?  
 13 A. Right now, I can't think, but I don't think  
 14 I've got an aunt or an uncle left.  
 15 Q. If they were kicking, they would be kicking  
 16 me, wouldn't they? That's all right.  
 17 A. My brain is --  
 18 Q. Have you ever filed a lawsuit other than this  
 19 one?  
 20 A. No, sir.  
 21 Q. Have you ever been sued?  
 22 A. No -- well, yes, I have, with the Department.  
 23 Yes.

Page 248

1 Q. Do you know of any other witnesses to this  
 2 matter or relative to this matter that have  
 3 not yet been named?  
 4 A. No, sir.  
 5 (Brief interruption.)  
 6 Q. Did you and Ms. Hubbard copy each other's EEOC  
 7 stuff at all so that you could file something  
 8 similar?  
 9 A. Yes, sir, we did some.  
 10 Q. Explain that to me, please.  
 11 A. Well, we would -- we compared notes I guess  
 12 you would say, yes, so it wouldn't take so  
 13 long.  
 14 Q. All right. So how did that work?  
 15 A. I would recall what I could recall and she  
 16 recalled what she could recall, and we just  
 17 wrote it down on paper is all I know.  
 18 Q. So if Ms. Hubbard recalled something that you  
 19 didn't recall, you would write it down. And  
 20 if you recalled something she didn't recall,  
 21 she would write it down. Is that the way it  
 22 would work?  
 23 A. The thing about it is, she would say, do you

Page 249

1 remember so and so? I would say, yeah, I do  
 2 remember that.  
 3 Q. Did y'all have any times where she said, you  
 4 know, do you remember when this happened? And  
 5 you said something like, well, you know, I  
 6 think I remember that it happened this way;  
 7 it's different. Or she said, I think I  
 8 remember it happening this way; it's a little  
 9 bit different. Any types of those  
 10 conversations?  
 11 A. No, sir.  
 12 Q. None?  
 13 A. No, sir.  
 14 Q. Y'all remembered everything exactly the same  
 15 after you finally remembered everything?  
 16 A. The thing about it was, she'd say, do you  
 17 remember what Henry said? And I would say,  
 18 yes.  
 19 If you're trying to say we changed our  
 20 stories, I did not change my story. I didn't  
 21 base this on hearsay. No, sir, I did not.  
 22 Q. All I can do is ask questions, and this is my  
 23 question. You got together. You compared



Deposition of Joan Owens

June 2, 2008

Page 250

1 notes, right?

2 A. Yes, sir.

3 Q. You would work around, change a little bit.

4 You would think some more, get together again

5 and talk about it, right?

6 MR. MOZINGO: Object to the form.

7 Q. Isn't that right?

8 MR. MOZINGO: Object to the form.

9 MR. NIX: I can ask it like that.

10 I'm the guy asking the

11 questions.

12 Q. Isn't that right?

13 MR. MOZINGO: Object to the form.

14 Q. He's not telling you not to answer. Don't pay

15 a bit of attention to him.

16 MR. MOZINGO: Pay attention to me.

17 I'm your lawyer.

18 A. What you're trying to say is that she put

19 words in my mouth and I put words in her

20 mouth. I'm not lying to anything I've said --

21 Q. No, no, no.

22 A. -- nor will I lie to anything I've said.

23 Q. Ma'am, I'm really not. I'm just trying to

Page 251

1 find out how it worked. That's all. I'm not

2 implying anything. I'm not. I'm not implying

3 anything. I'm just trying to find out the

4 truth about how it worked. Please don't be

5 defensive about it.

6 A. We compared notes, yes, sir. We've compared

7 notes. But as far as she would tell me

8 something and I'd say yeah, yeah, yeah, and I

9 didn't remember something --

10 I am not lying about anything I've said.

11 Now, I've tried to remember everything as

12 exactly as I can remember it and tell the

13 truth as well as I remember it, sir.

14 Q. I understand. So how many times do you think

15 y'all got together and talked about it?

16 A. I have no idea. I've already stated --

17 Q. More than twice?

18 A. Yes, more than twice.

19 Q. More than three times?

20 A. More than three times.

21 Q. More than four?

22 A. We're talking about three years.

23 Q. I'm talking about, though, while you were

Page 252

1 putting together your EEOC complaint.

2 A. Yes, if you'll read it, it's quite extensive.

3 Q. I know it is. I know it is. So what you're

4 saying is, it was a period of time that went

5 back pretty far?

6 A. Yes, sir.

7 Q. So y'all had to meet and get together and try

8 to recall things a number of times?

9 A. Yes, sir.

10 Q. Had to meet a number of times?

11 A. Yes, sir.

12 Q. Now, with regard to Ms. Bell, I know you wrote

13 the letter about Ms. Bell and I know you

14 complained about Ms. Bell and that she was

15 rude to you.

16 A. Yes, she was.

17 Q. All right. So how was she rude?

18 A. She would not let you finish saying what you

19 were saying, and she wouldn't listen to what

20 you were saying. When I tried to explain to

21 her that something that she had put down was

22 wrong, she would talk over you and would not

23 listen to you.

Page 253

1 Yes, she was very rude because she would

2 not listen to you. She would talk over you

3 and wouldn't listen.

4 Q. Anything else?

5 A. Well, I called her and asked her about -- I

6 cannot swear to the fact that it was

7 Mrs. Bell, and I want that put on the record.

8 Q. Mrs. who, now? Oh, Mrs. Bell?

9 A. That's the one you were asking about.

10 Q. I'm sorry.

11 A. I asked about filing an EEOC, and she said I

12 couldn't do it unless I came through those

13 doors up there at Birmingham. And that's why

14 I had to take off from work and go up there is

15 because she said I had to walk through the

16 doors to file my complaint, which --

17 But anyway, yes, she's a rude person --

18 or was rude to me.

19 Q. So you called up there before you drove up --

20 A. Yes.

21 Q. -- at some point in time?

22 A. And she told me to come -- she said, you're

23 going to have to come through these doors to

Page 254	Page 256
<p>1 file your complaint.</p> <p>2 Q. It sounded like Ms. Bell to you?</p> <p>3 A. It sounded like Ms. Bell. Let it be on the</p> <p>4 record that I'm not saying that it was.</p> <p>5 Q. Anything else about Ms. Bell?</p> <p>6 A. No.</p> <p>7 Q. No?</p> <p>8 A. Her supervisor was very -- she asked me to</p> <p>9 write about Mrs. Bell because she had had</p> <p>10 problems with her, and that was Veneda Jordan.</p> <p>11 Q. Veneda Jordan?</p> <p>12 A. Uh-huh. (Positive response.) Is her</p> <p>13 supervisor -- or was her supervisor.</p> <p>14 Q. Did she tell you what kind of problems she'd</p> <p>15 had?</p> <p>16 A. No, she didn't.</p> <p>17 Q. Now, did you ever call anybody else at EEOC to</p> <p>18 complain about Ms. Bell after you got the --</p> <p>19 A. No. I called Veneda Jordan is who I called</p> <p>20 and talked with.</p> <p>21 Q. That's the only person you talked with?</p> <p>22 A. As far as I know at this point in time. I</p> <p>23 don't recall.</p>	<p>1 EXAMINATION</p> <p>2 BY MR. MOZINGO:</p> <p>3 Q. Ms. Owens, I just want to clear up one thing</p> <p>4 for the record. You were asked earlier</p> <p>5 whether the actions of the Department of</p> <p>6 Mental Health with regard to the creation of</p> <p>7 the position that we're here about today</p> <p>8 violated any departmental policies. I believe</p> <p>9 you testified that it violated the Equal</p> <p>10 Opportunity policies of the Department. Do</p> <p>11 you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And then you also testified later -- in fact,</p> <p>14 probably about 30 or 45 minutes ago -- that</p> <p>15 the specs and substitution clause that are at</p> <p>16 issue in this case never went before the job</p> <p>17 review committee. Do you remember testifying</p> <p>18 about that?</p> <p>19 A. Yes.</p> <p>20 Q. Was that another example of a violation of</p> <p>21 departmental policies in this case?</p> <p>22 A. Yes, sir.</p> <p>23 MR. NIX: May I ask for a</p>
Page 255	Page 257
<p>1 Q. When did you first contact an attorney to help</p> <p>2 you?</p> <p>3 A. After I received a letter from Sherry Guenster</p> <p>4 telling me that they had found just cause.</p> <p>5 Q. That was right after that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And who was that?</p> <p>8 A. Rick Traywick.</p> <p>9 MR. NIX: Can we talk one second,</p> <p>10 and then we may be through. You</p> <p>11 may have something. I don't</p> <p>12 know. We may be through.</p> <p>13 MR. MOZINGO: I've got one thing,</p> <p>14 but I can wait until y'all are</p> <p>15 done.</p> <p>16 (Brief recess was taken.)</p> <p>17 MR. NIX: I have one more.</p> <p>18 Q. Is there any reason, Ms. Owens, that you filed</p> <p>19 this lawsuit that we're here about today other</p> <p>20 than the reasons you've already told me in</p> <p>21 this deposition?</p> <p>22 A. None that I know of.</p> <p>23 MR. NIX: That's all.</p>	<p>1 clarification what you're</p> <p>2 talking about there? When you</p> <p>3 say the specs, are you referring</p> <p>4 to the specs for this job?</p> <p>5 MR. MOZINGO: Yes.</p> <p>6 MR. NIX: For the Departmental</p> <p>7 Assistant Personnel Manager?</p> <p>8 MR. MOZINGO: Yes.</p> <p>9 MR. NIX: And when you say the</p> <p>10 substitution clause, what are</p> <p>11 you talking about? The fact</p> <p>12 that the substitution clause was</p> <p>13 not included in this spec for</p> <p>14 the Departmental Assistant</p> <p>15 Personnel Manager? Is that what</p> <p>16 you're referring to?</p> <p>17 MR. MOZINGO: I am, but I'm not</p> <p>18 testifying. That's what I'm</p> <p>19 referring to.</p> <p>20 MR. NIX: I want to clarify your</p> <p>21 question. That's all I want to</p> <p>22 do.</p> <p>23 MR. MOZINGO: You can ask her.</p>

Deposition of Joan Owens

June 2, 2008

Page 258

## EXAMINATION

BY MR. NIX:

Q. Ms. Owens, Flynn just asked you about a couple of things regarding violations of Mental Health policy. And he asked you whether -- he didn't say assuming, but whether -- if you assume that the regulation -- what am I saying?

That if you assume that the specifications for the job Departmental Assistant Personnel Manager were not brought before the Job Evaluation Committee and that the fact that that specification would not contain the substitution provision, he asked you whether or not that would be a violation of the Department policy, I think.

A. It's supposed to be brought before them, and they're supposed to vote on that. As far as I can tell -- and I've read all of the minutes -- I never saw in the minutes where it was -- the specifications for the job were okayed by the Job Evaluation Committee.

Q. Okay.

Page 259

A. Is that what you wanted me to say?

Q. That's what I wanted to know. And that's what y'all were talking about when he asked you that question?

A. Yes, sir.

MR. NIX: Okay. That's all. Thank you.

MR. MOZINGO: That's all I have.  
(Deposition concluded at 5:55 p.m.)

\*\*\*\*\*

FURTHER DEPONENT SAITH NOT

\*\*\*\*\*

Page 260

## REPORTER'S CERTIFICATE

STATE OF ALABAMA:

MONTGOMERY COUNTY:

I, Lisa J. Green, CCR, Registered

Professional Reporter, and Commissioner for the State of Alabama at Large, do hereby certify that I reported the deposition of:

JOAN OWENS

who was first duly sworn by me to speak the truth, the whole truth and nothing but the truth, in the matter of:

JOAN FAULK OWENS and KAREN LYNN HUBBARD,  
Plaintiffs,

Vs.

STATE OF ALABAMA DEPT. OF MENTAL HEALTH  
AND MENTAL RETARDATION, et al.,

Defendants.

In The U.S. District Court

For the Middle District of Alabama

Northern Division

Case Number 2:07-CV-650

on Monday, June 2, 2008.

The foregoing 259 computer printed pages

Page 261

contain a true and correct transcript of the examination of said witness by counsel for the parties set out herein. The reading and signing of same is hereby waived.

I further certify that I am neither of kin nor of counsel to the parties to said cause nor in any manner interested in the results thereof.

This 9th day of June 2008.

\_\_\_\_\_  
Lisa J. Green, ACCR #334  
Expiration Date: 9-30-2008  
Registered Professional Reporter  
and Commissioner for the State  
of Alabama at Large

**DEPOSITION OF LYNN HUBBARD**

**June 3, 2008**

**Pages 1 through 213**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

**Plaintiffs'  
Exhibit 107**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and  
KAREN LYNN HUBBARD,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
2:07-CV-650

STATE OF ALABAMA DEPT. OF  
MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF LYNN HUBBARD, taken pursuant to stipulation and agreement before Lisa J. Green, CCR, ACCR # 334, Registered Professional Reporter and Commissioner for the State of Alabama at Large, in the Law Offices of Melton, Espy & Williams, 255 Dexter Avenue, Montgomery, Alabama on Tuesday, June 3, 2008, commencing at approximately 10:25 a.m.

\* \* \* \* \*

Deposition of Lynn Hubbard

June 3, 2008

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. J. Flynn Mozingo</p> <p>5 MELTON, ESPY &amp; WILLIAMS</p> <p>6 Attorneys at Law</p> <p>7 255 Dexter Avenue</p> <p>8 Montgomery, Alabama</p> <p>9 FOR THE DEFENDANT:</p> <p>10 Mr. H. E. Nix, Jr.</p> <p>11 NIX, HOLTSFORD, GILLILAND,</p> <p>12 HIGGINS &amp; HITSON</p> <p>13 Attorneys at Law</p> <p>14 Suite 300</p> <p>15 4001 Carmichael Road</p> <p>16 Montgomery, AL 36106</p> <p>17</p> <p>18 Mr. Courtney W. Tarver</p> <p>19 Deputy Attorney General and</p> <p>20 General Counsel</p> <p>21 Bureau of Legal Services</p> <p>22 ADMH/MR</p> <p>23 RSA Union Building</p> <p>100 North Union Street</p> <p>Montgomery, Alabama</p> <p>ALSO PRESENT:</p> <p>Ms. Joan Owens</p> <p>Ms. Marilyn Benson</p> <p>Mr. Henry Ervin</p>	<p>1 STIPULATION</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between counsel representing the parties that the</p> <p>4 deposition of LYNN HUBBARD is taken pursuant to the</p> <p>5 Federal Rules of Civil Procedure and that said</p> <p>6 deposition may be taken before Lisa J. Green,</p> <p>7 Registered Professional Reporter and Commissioner for</p> <p>8 the State of Alabama at Large, without the formality</p> <p>9 of a commission, that objections to questions other</p> <p>10 than objections as to the form of the question need</p> <p>11 not be made at this time but may be reserved for a</p> <p>12 ruling at such time as the said deposition may be</p> <p>13 offered in evidence or used for any other purpose by</p> <p>14 either party provided for by the Statute.</p> <p>15 It is further stipulated and agreed by and</p> <p>16 between counsel representing the parties in this case</p> <p>17 that the filing of said deposition is hereby waived</p> <p>18 and may be introduced at the trial of this case or</p> <p>19 used in any other manner by either party hereto</p> <p>20 provided for by the Statute regardless of the waiving</p> <p>21 of the filing of the same.</p> <p>22 It is further stipulated and agreed by and</p> <p>23 between the parties hereto and the witness that the</p>
Page 3	Page 5
<p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 LYNN HUBBARD</p> <p>4 BY MR. NIX ..... 5</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7</p> <p>8 MAR</p> <p>9 DEFENDANT'S EXHIBIT</p> <p>10 14 Charge of Discrimination for Karen Hubbard 101</p> <p>11</p> <p>12 15 Dismissal and Notice of Rights for Karen 103</p> <p>13 Hubbard</p> <p>14 16 DMH/MR Internet Use Policy 130</p> <p>15 17 11/6 Fax Transmittal Sheet with attached 184</p> <p>16 11/6/06 letter to Sherry Guenster from</p> <p>17 Karen Hubbard</p> <p>18 18 9/25/06 letter to Emanuel Smith from Karen 189</p> <p>19 Hubbard</p> <p>20 19 10/4/06 letter to Karen Hubbard from 189</p> <p>21 Bernice Williams-Kimbrough</p> <p>22 20 9/18/06 letter to Bernice 192</p> <p>23 Williams-Kimbrough from Karen Hubbard with</p> <p>attachments</p> <p>21 Notice of Intent to Reconsider for Karen 192</p> <p>Hubbard</p> <p>22</p> <p>23 22 Notice of Right to Sue Within 90 Days 193</p>	<p>1 signature of the witness to this deposition is hereby</p> <p>2 waived.</p> <p>3</p> <p>4 * * * * *</p> <p>5</p> <p>6 LYNN HUBBARD</p> <p>7 The witness, after having first been duly</p> <p>8 affirmed to speak the truth, the whole truth and</p> <p>9 nothing but the truth testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. NIX:</p> <p>12 Q. Would you state your name, please, ma'am.</p> <p>13 A. Karen Lynn Hubbard.</p> <p>14 Q. Where are you from, Ms. Hubbard?</p> <p>15 A. This area. Montgomery, Prattville, Millbrook</p> <p>16 area.</p> <p>17 Q. Okay. Were you raised in this area?</p> <p>18 A. I was raised in an area between these areas.</p> <p>19 I went to school in Millbrook.</p> <p>20 Q. And then you live where now?</p> <p>21 A. Montgomery.</p> <p>22 Q. Are you married?</p> <p>23 A. I'm not.</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 6	Page 8
<p>1 Q. Not married. Have you ever been married?</p> <p>2 A. No, sir.</p> <p>3 Q. Do you have any relatives around here?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Who are they?</p> <p>6 A. I'm the youngest of eight children, so I have</p> <p>7 brothers and sisters and they have children.</p> <p>8 So tell me how you would like me to give it to</p> <p>9 you.</p> <p>10 Q. Are your parents still alive?</p> <p>11 A. Both deceased.</p> <p>12 Q. So why don't you start with your oldest</p> <p>13 sibling first and go down the line.</p> <p>14 A. My oldest sibling is deceased. My sister,</p> <p>15 Jean Bowling.</p> <p>16 Q. Jean Bolling, B-O-L-L --</p> <p>17 A. L-L-I-N-G.</p> <p>18 Q. Is she married?</p> <p>19 A. Yes.</p> <p>20 Q. To who?</p> <p>21 A. Ernest A. Bolling.</p> <p>22 Q. Do they work?</p> <p>23 A. She has never worked, and he's retired.</p>	<p>1 the order of the ages of my sisters. The</p> <p>2 brothers and all, I may get them all kind of</p> <p>3 whop-sided. Just for the record, I'm doing my</p> <p>4 best.</p> <p>5 Q. That's quite all right. Don't worry about</p> <p>6 that. We'll just wade through it.</p> <p>7 A. My sister that's deceased was married and</p> <p>8 lived in California.</p> <p>9 Q. No children here?</p> <p>10 A. No children here.</p> <p>11 Q. No ex-spouse here?</p> <p>12 A. No.</p> <p>13 Q. And then Jean and Ernest, they had children.</p> <p>14 How about your next sibling?</p> <p>15 A. Jerry Hubbard.</p> <p>16 Q. Where does he live?</p> <p>17 A. Millbrook.</p> <p>18 Q. What does he do?</p> <p>19 A. He's retired.</p> <p>20 Q. What is he retired from?</p> <p>21 A. Lazenby Tire Company.</p> <p>22 Q. Is he married?</p> <p>23 A. Yes.</p>
Page 7	Page 9
<p>1 Q. What did he retire from?</p> <p>2 A. The Guard.</p> <p>3 Q. Do they have any children that are over the</p> <p>4 age of 19?</p> <p>5 A. Yes, two daughters.</p> <p>6 Q. Do they live in this area?</p> <p>7 A. One lives in Prattville. The other is in</p> <p>8 South Carolina.</p> <p>9 Q. Who is the one who lives in Prattville?</p> <p>10 A. Debbie Bryant.</p> <p>11 Q. Is she married?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know her husband's name?</p> <p>14 A. Danny.</p> <p>15 Q. Do you know what he does?</p> <p>16 A. He's a welder, but I'm not sure ...</p> <p>17 Q. Does Debbie work?</p> <p>18 A. She's a Mary Kay consultant.</p> <p>19 Q. With respect to your oldest sibling, did that</p> <p>20 sibling marry?</p> <p>21 A. Let me say first that I may not be doing this</p> <p>22 chronologically. My mother used to call me</p> <p>23 Bobbie Jean Sue Lynn. That's how I go through</p>	<p>1 Q. Who's his wife?</p> <p>2 A. Ann.</p> <p>3 Q. Do they have children?</p> <p>4 A. They do not have children. Jerry has children.</p> <p>5 Q. Does Ann work?</p> <p>6 A. She works for a day care in Millbrook, but I</p> <p>7 don't know the name of it.</p> <p>8 Q. How old are -- Does Jerry have children 19 or</p> <p>9 over?</p> <p>10 A. Yes. He has a daughter, Sandra, that lives</p> <p>11 in Millbrook.</p> <p>12 Q. Sandra?</p> <p>13 A. Brownfield.</p> <p>14 Q. And does she work?</p> <p>15 A. She works for Colonial Bank.</p> <p>16 Q. Is she married?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know her husband's name?</p> <p>19 A. Donny Brownfield.</p> <p>20 Q. Does he work?</p> <p>21 A. He does security work, and I'm not real clear</p> <p>22 where he works right now.</p> <p>23 Q. Do they have children, but they're younger?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 10	Page 12
<p>1 A. Young.</p> <p>2 Q. Then your next -- wait a minute. Let's see.</p> <p>3 You said that Jerry has children not by Ann --</p> <p>4 A. Correct.</p> <p>5 Q. -- but by another person. Who was that</p> <p>6 person?</p> <p>7 A. He has two daughters by Martha Hubbard. Her</p> <p>8 maiden name was Robinson. And those daughters</p> <p>9 are Sandra and her sister, Cindy.</p> <p>10 Q. And does Cindy live around here?</p> <p>11 A. Cindy lives in Madison, Alabama.</p> <p>12 Q. That's up north?</p> <p>13 A. Uh-huh. (Positive response.)</p> <p>14 Q. Martha live around here?</p> <p>15 A. She lives in Georgia.</p> <p>16 Q. Okay. Go to your next sibling.</p> <p>17 A. And then he has a daughter -- you don't want</p> <p>18 the other daughter?</p> <p>19 Q. Is there another one?</p> <p>20 A. By his first wife -- well, I think she's his</p> <p>21 first wife, Dianne. A daughter named Deadra,</p> <p>22 and I think she lives in Wetumpka. We call</p> <p>23 her Dee-Dee.</p>	<p>1 A. No.</p> <p>2 Q. Are you next in line?</p> <p>3 A. No. I'm the baby.</p> <p>4 Q. You're the baby?</p> <p>5 A. Uh-huh. (Positive response.) Ray Hubbard.</p> <p>6 Q. Ray Wiley Hubbard?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you know who Ray Wiley Hubbard is?</p> <p>9 A. No, sir.</p> <p>10 Q. He's a real person. Man, he writes the best</p> <p>11 songs you've ever heard, but never mind.</p> <p>12 Ray Hubbard. I'm sorry.</p> <p>13 A. That's okay.</p> <p>14 Q. Where does he work?</p> <p>15 A. He owns Double O Pawnshop in Millbrook.</p> <p>16 Q. Is that with a D-O-U --</p> <p>17 A. You spell out double. D-O-U-B-L-E, O. Double</p> <p>18 O. The word Double and O.</p> <p>19 Q. I can't spell. Double O Pawnshop in</p> <p>20 Millbrook?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Did you say he's married?</p> <p>23 A. Yes. His wife's name is Vickie, and I don't</p>
Page 11	Page 13
<p>1 Q. Do you know her last name?</p> <p>2 A. Parham, P-A-R-H-A-M.</p> <p>3 Q. What does she do?</p> <p>4 A. She's working with the -- something with</p> <p>5 Elmore County school system. I think she</p> <p>6 works with the special ed kids, just like a</p> <p>7 teacher assistant maybe.</p> <p>8 Q. Is she married?</p> <p>9 A. She's divorced.</p> <p>10 Q. Do you know the name of her ex-husband?</p> <p>11 A. Jamie Parham.</p> <p>12 Q. Do you know what he does?</p> <p>13 A. I don't know what he does now.</p> <p>14 Q. Do they have any children over 19?</p> <p>15 A. Yes, a son and a daughter. And I'm pretty</p> <p>16 sure the daughter is in Arizona, and the son</p> <p>17 may be. He's been back and forth. At this</p> <p>18 point, I don't really know where he is.</p> <p>19 Q. Who's your next sibling?</p> <p>20 A. Sue Hubbard is my sister.</p> <p>21 Q. Not married?</p> <p>22 A. No.</p> <p>23 Q. Ever been married?</p>	<p>1 know her maiden name.</p> <p>2 Q. Do they have children over 19?</p> <p>3 A. She has a child by a previous marriage who --</p> <p>4 her name is Mimi, and she's mentally disabled.</p> <p>5 Q. Okay. Did you say his wife's name is Vickie</p> <p>6 or Mimi?</p> <p>7 A. Mimi is the daughter. Vickie is his wife.</p> <p>8 Now, he has children from a previous marriage.</p> <p>9 Q. Are they over 19?</p> <p>10 A. Yes, and there's a bunch of them. They're</p> <p>11 not -- not all of them are his. He married a</p> <p>12 woman that had kids, so he ended up with eight</p> <p>13 kids also.</p> <p>14 Q. How many of them live around this area?</p> <p>15 A. Dennis Hubbard is his son, and he lives in</p> <p>16 Millbrook or Prattville, one or the other.</p> <p>17 I'm not sure where.</p> <p>18 Q. Okay. Keep going just on the children that</p> <p>19 live in this area that are over 19.</p> <p>20 A. His stepdaughter, Barbara.</p> <p>21 MR. MOZINGO: If you would like for</p> <p>22 me to have her prepare a list</p> <p>23 for you to kind of expedite it,</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 14	Page 16
<p>1 I'll be glad to. It's up to 2 you. 3 MR. NIX: That's great if you don't 4 mind doing that. I mean, I was 5 going to ask also about aunts 6 and uncles, that kind of stuff. 7 I just want to get a complete -- 8 pretty close family tree so I'll 9 know how to -- 10 MR. MOZINGO: Since it's late 11 starting and she's apparently 12 related to every third person in 13 Montgomery -- 14 MR. NIX: That's true. 15 MR. MOZINGO: -- we'll just do that 16 to move us along. 17 Q. Do you attend church anywhere? 18 A. I do. 19 Q. Where do you go to church? 20 A. Frazer. 21 Q. I thought your face looked a little familiar. 22 A. I'm not a member, and I've only been going 23 very recently. I'm a member of a Sunday</p>	<p>1 A. Yes, sir. 2 Q. When did you first become employed with the 3 Department of Mental Health? 4 A. December 31st of 1991. 5 Q. What did you do? 6 A. I was a Clerk Typist in the Mental Retardation 7 division. 8 Q. What was your next job? 9 A. The classification actually changed to 10 Administrative Support Assistant in Mental 11 Retardation, and then I transferred to the 12 Personnel Office. 13 Q. When did you transfer to Personnel? 14 A. I was only in Mental Retardation a year to two 15 years. I can't say. I've looked, and I know, 16 but I can't -- I haven't memorized it. I'm 17 sorry. 18 Q. Since '92 or '93 -- 19 A. Yes. 20 Q. -- that you transferred? 21 A. I would think. 22 Q. Transferred to the Central Office Personnel? 23 A. Yes, sir.</p>
Page 15	Page 17
<p>1 school class there. Volunteer some 2 information. 3 Q. What class do you go to? 4 A. Women in Christ. 5 Q. Who teaches that class? 6 A. Vivian somebody. 7 Q. There's so many people over there, it's hard 8 to remember. All right. So you attend 9 Frazer. 10 Are you a member of any organizations or 11 entities? 12 A. Huh-uh. (Negative response.) No, sir. I'm 13 sorry. 14 Q. Any clubs? 15 A. No, sir. 16 Q. Just church. Work, church, and home? 17 A. Yes. 18 Q. What is your birth date? 19 A. February 20, 1958. 20 Q. And you are the Karen Lynn Hubbard that's the 21 plaintiff in this lawsuit -- 22 A. Yes, sir. 23 Q. -- that we're here about today; is that right?</p>	<p>1 Q. Who was your boss then? 2 A. My supervisor was Sue Smitherman. 3 Q. What was your job at that time? 4 A. I was clerical support to the Personnel 5 Specialist and also to Sue Smitherman if she 6 needed anything done. But basically, I did 7 technical support for the Personnel 8 Specialist. 9 Q. How long did you have that job? 10 A. I was promoted to Administrative Support 11 Assistant III ... I don't know what year it 12 was. 13 Q. Just give me a ballpark. Why don't you do 14 that? 15 A. You think that's easy until you get here and 16 ask me something. 17 Q. I know. It's not as easy as you think 18 sometimes, is it? 19 A. Butch was already gone. Henry was there. 20 MR. ERVIN: '98? '97, '98. 21 A. I would be guessing between '96, '97, '98. I 22 don't know. 23 Q. You were put in what position at that time?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 18	Page 20
<p>1 A. ASA III. Administrative Support Assistant</p> <p>2 III.</p> <p>3 Q. Administrative Support Assistant III. All</p> <p>4 right.</p> <p>5 A. You know what. That's not true.</p> <p>6 Q. That's not true?</p> <p>7 A. I was already an ASA III, I think, when Henry</p> <p>8 came. I'm sorry.</p> <p>9 Q. That's all right.</p> <p>10 MR. MOZINGO: Just to the best of</p> <p>11 your memory. I mean, it's not a</p> <p>12 test.</p> <p>13 Q. It's really not.</p> <p>14 A. I would say that I was in Personnel maybe</p> <p>15 three to four years when I was promoted, maybe</p> <p>16 five years, to Administrative Support</p> <p>17 Assistant III.</p> <p>18 Q. Okay.</p> <p>19 A. I get tangled up with that and my other</p> <p>20 promotion sometimes.</p> <p>21 Q. What was your next job after Administrative</p> <p>22 Support Assistant III?</p> <p>23 A. Personnel Specialist III.</p>	<p>1 this that you were present for that deposition?</p> <p>2 A. That's correct.</p> <p>3 Q. And you listened to my questions?</p> <p>4 A. I did.</p> <p>5 Q. And you heard her answers; isn't that correct?</p> <p>6 A. I did.</p> <p>7 Q. And you heard her say that in the course of</p> <p>8 the two of you filing complaints with the</p> <p>9 Equal Employment Opportunity Commission, that</p> <p>10 you conversed together, talked, compared</p> <p>11 notes, that sort of thing. Is she correct</p> <p>12 about that?</p> <p>13 A. I had disagreements with her in the way that</p> <p>14 she worded things that she said, so can you</p> <p>15 ask me the question, like, specifically to</p> <p>16 what you're referring to?</p> <p>17 Q. Well, how about doing it this way. I believe</p> <p>18 her testimony was that during the course of</p> <p>19 time when the two of you were preparing to</p> <p>20 file a charge against the Alabama Department</p> <p>21 of Mental Health and Mental Retardation</p> <p>22 relative to the job of the Departmental</p> <p>23 Assistant Personnel Manager and the fact that</p>
Page 19	Page 21
<p>1 Q. When did you become a Personnel Specialist</p> <p>2 III?</p> <p>3 A. July 1st of 2001.</p> <p>4 Q. Okay.</p> <p>5 A. I think it's 2001. 2000, 2001, but I'm going</p> <p>6 with 2001.</p> <p>7 Q. One. That's your story and you're sticking to</p> <p>8 it.</p> <p>9 I have all that information. I just</p> <p>10 wanted to go through it and just kind of get a</p> <p>11 ballpark for the --</p> <p>12 A. Okay.</p> <p>13 Q. -- for the dates and the lay of the land.</p> <p>14 Now, there came a time when there was an</p> <p>15 announcement for a job called Departmental</p> <p>16 Assistant Personnel Manager.</p> <p>17 A. Uh-huh. (Positive response.)</p> <p>18 Q. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, and by the way, Ms. Hubbard, I want to</p> <p>21 make sure that this was on the record, too.</p> <p>22 Isn't it correct that yesterday when I asked</p> <p>23 Ms. Owens questions in a deposition just like</p>	<p>1 the substitution provision was left out of it,</p> <p>2 that y'all talked, that you kind of compared</p> <p>3 notes, that you had a number of different</p> <p>4 conversations and tried together to remember</p> <p>5 the sequence of events. That's my</p> <p>6 recollection.</p> <p>7 A. Okay.</p> <p>8 Q. So would you tell me your recollection of how</p> <p>9 that actually occurred, if it differs with</p> <p>10 what I've said.</p> <p>11 A. We have discussed the situation concerning the</p> <p>12 position and the use of the substitution</p> <p>13 clause. It was Joan's idea -- Joan first came</p> <p>14 up with saying that she would file an EEOC,</p> <p>15 although through the whole process, I think</p> <p>16 neither of us really believed that it would be</p> <p>17 necessary because to us, it was such a blatant</p> <p>18 violation of procedures that we just didn't</p> <p>19 think they would really do it.</p> <p>20 Q. You just said y'all discussed the use of the</p> <p>21 substitution provision?</p> <p>22 A. Yes.</p> <p>23 Q. And what else did you say?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 22	Page 24
<p>1 THE WITNESS: What else did I say?</p> <p>2 Q. You may have said the nonuse -- I don't know.</p> <p>3 MR. NIX: She can read it back for</p> <p>4 you.</p> <p>5 THE WITNESS: That would be great.</p> <p>6 (The following was read:</p> <p>7 Answer: We have discussed the</p> <p>8 situation concerning the</p> <p>9 position and the use of the</p> <p>10 substitution clause. It was</p> <p>11 Joan's idea -- Joan first came</p> <p>12 up with saying that she would</p> <p>13 file an EEOC, although through</p> <p>14 the whole process, I think</p> <p>15 neither of us really believed</p> <p>16 that it would be necessary</p> <p>17 because to us, it was such a</p> <p>18 blatant violation of procedures</p> <p>19 that we just didn't think they</p> <p>20 would really do it.)</p> <p>21 Q. Did she make this statement that she would</p> <p>22 file an EEOC after the job had been awarded to</p> <p>23 Marilyn?</p>	<p>1 Q. Oh, I know.</p> <p>2 A. Make sure --</p> <p>3 Q. As I told her --</p> <p>4 A. -- that we're consistent.</p> <p>5 Q. -- I wasn't suggesting --</p> <p>6 (Brief interruption.)</p> <p>7 MR. MOZINGO: Just answer the</p> <p>8 question directly, and don't</p> <p>9 talk over him.</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 MR. MOZINGO: Just let him ask the</p> <p>12 question.</p> <p>13 THE WITNESS: I'm sorry. I</p> <p>14 apologize.</p> <p>15 Q. Go ahead. I'm sorry.</p> <p>16 A. I forgot where I was.</p> <p>17 Q. You were telling me there was no plan to</p> <p>18 contrive or get together or create a story.</p> <p>19 A. To compare notes.</p> <p>20 Q. I wasn't suggesting that yesterday or today.</p> <p>21 I'm just asking, you know, what happened.</p> <p>22 That's all.</p> <p>23 A. I wouldn't have used "compared notes" is what</p>
Page 23	Page 25
<p>1 A. I'm sure she probably said that after that</p> <p>2 happened, yes.</p> <p>3 Q. Did she say it before that happened?</p> <p>4 A. I believe she did.</p> <p>5 Q. Okay. So tell me about that.</p> <p>6 A. Can I just answer one thing that you asked?</p> <p>7 Q. Sure. I'm sorry.</p> <p>8 A. That I disagreed with something she testified</p> <p>9 to.</p> <p>10 Q. Sure. Yes, ma'am.</p> <p>11 A. It's the term comparing notes. Because it was</p> <p>12 never -- this was what was really eating me</p> <p>13 when Joan was answering this yesterday was</p> <p>14 that we compared notes.</p> <p>15 The most thing would be -- I can tell you</p> <p>16 a number of times when I'd say, well, Joan,</p> <p>17 you're going to have to tell it the way you</p> <p>18 see it and I'm going to have to tell it the</p> <p>19 way I see it because there's differences in</p> <p>20 how we see things. Joan and I don't always</p> <p>21 see things the same. So there wasn't this</p> <p>22 plan to sit down together and get our stories</p> <p>23 straight.</p>	<p>1 I was going to say.</p> <p>2 Q. What word would you have used or what term?</p> <p>3 A. I'd rather you just ask me a question and then</p> <p>4 I'll try to answer your question.</p> <p>5 Q. You just said to me you would not have used</p> <p>6 the term that Joan used yesterday when she</p> <p>7 said we compared notes.</p> <p>8 A. My recollection was that you said did y'all</p> <p>9 talk about it, and she said yes. And it was</p> <p>10 more -- I felt like you were going in a</p> <p>11 direction of comparing notes. But I think if</p> <p>12 you had asked me the same questions you asked</p> <p>13 Joan, I would have answered differently. I</p> <p>14 think that's the best I'm going to be able to</p> <p>15 give you on it.</p> <p>16 Q. You're saying, though, that you did not</p> <p>17 compare notes?</p> <p>18 A. No.</p> <p>19 Q. Let's talk about your concept of comparing</p> <p>20 notes.</p> <p>21 A. Okay.</p> <p>22 Q. What is your concept of comparing notes?</p> <p>23 A. I've got this. Do you have that? Oh, you've</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 26

1 got that. Well, then, I'm going to put this.  
 2 Q. What you're doing is you're pretending as you  
 3 give that answer like you're looking at a  
 4 piece of paper?  
 5 A. Right.  
 6 Q. And looking over at another place that would  
 7 be another piece of paper or a person --  
 8 A. As though I would ask Joan, what do you have?  
 9 And I'd say, oh, I don't have that; I'll put  
 10 that. Or Joan would say I don't have that;  
 11 I'm going to put that. It wasn't like that.  
 12 Q. I hear you. Okay.  
 13 A. Okay.  
 14 Q. Did you ever tell Joan before the filing of  
 15 the EEOC complaint what you did have in terms  
 16 of a recollection -- or did you -- well, let's  
 17 use that first.  
 18 Did you ever tell her what you had in  
 19 terms of a recollection on any point or on the  
 20 entire matter before the filing of the EEOC  
 21 charge?  
 22 A. Basically the common points that we discussed  
 23 were that this position seemed designed for

Page 27

1 Marilyn and that they violated procedures in  
 2 the way they went about creating the position  
 3 and getting the position filled and that we  
 4 had a common belief that the reason they had  
 5 selected Marilyn was because of her race.  
 6 Q. They violated procedures in two ways, you  
 7 said. What were those two ways?  
 8 A. I said they violated in two ways?  
 9 Q. Well, you said they violated procedures --  
 10 A. How they created the position and how they  
 11 went about getting approvals to get it filled.  
 12 Q. Let me make sure I've got this right. Are you  
 13 saying that you and Marilyn -- excuse me, you  
 14 and Ms. Owens discussed and agreed upon some  
 15 points? One was that the position seemed to  
 16 be designed for Marilyn?  
 17 A. Uh-huh. (Positive response.)  
 18 Q. Yes? You have to say yes or no.  
 19 MR. MOZINGO: Answer out loud.  
 20 A. I'm sorry. Yes.  
 21 Q. That's all right. I'll remind you.  
 22 And you're saying that y'all seemed to  
 23 agree on the fact that they had violated

Page 28

1 procedures in how they had created the  
 2 position and in the manner in which they got  
 3 approvals for the position?  
 4 A. Yes.  
 5 Q. Is that correct?  
 6 A. Yes.  
 7 Q. Okay. And you said that both of you believed  
 8 that they had selected Marilyn because of her  
 9 race?  
 10 A. Yes.  
 11 Q. Do you recall when you first discussed these  
 12 points that we just talked about? The fact  
 13 that the position seemed to be designed for  
 14 Marilyn, that they violated procedures in how  
 15 they created the position in getting the  
 16 approvals, do you remember when you first  
 17 discussed those two things?  
 18 A. The first conversation that I had with Joan  
 19 was when I found out there was a position.  
 20 And I said, did you know there was a position,  
 21 and she said no.  
 22 Q. When did you first find out there was a  
 23 position?

Page 29

1 A. It was -- I would say it was early '05, late  
 2 '04, early '05.  
 3 Q. How do you know that, late '04, early '05?  
 4 A. Honestly, I remember things by the fact that I  
 5 was going on vacation in May of '05, and a lot  
 6 of my vacation predicated some things that I  
 7 did as a result, so I know -- that's how I  
 8 know the time frame.  
 9 Q. You were going on vacation in May 2005; is  
 10 that right?  
 11 A. Yes.  
 12 Q. So how does that help you come up with the  
 13 date of late '04 to early '05 that you first  
 14 learned of the position?  
 15 A. Because I know that I talked to the  
 16 Commissioner about this position. And the  
 17 reason that I did it was, I was about to go on  
 18 a two-week vacation. I only knew that there  
 19 was a position. I didn't know how far along  
 20 in the development it was. I didn't know  
 21 anything about the qualifications.  
 22 But the fact that it wasn't talked about  
 23 in staff meetings the way normally positions



Deposition of Lynn Hubbard

June 3, 2008

Page 30	Page 32
<p>1 are, the fact that Joan and I weren't privy to</p> <p>2 discussions concerning the needs of the office</p> <p>3 or qualifications for a position as we usually</p> <p>4 do, that I felt that they were about to</p> <p>5 appoint Marilyn this position without</p> <p>6 following procedures, and I wanted to be sure</p> <p>7 that I had an opportunity to apply for it was</p> <p>8 my main concern.</p> <p>9 In other words, I didn't want it to get</p> <p>10 announced and closed and filled while I was on</p> <p>11 vacation.</p> <p>12 Q. So you're giving me -- you're saying you</p> <p>13 talked to the Commissioner, and the reason you</p> <p>14 talked to him was because you knew that there</p> <p>15 was a position. You didn't know what stage it</p> <p>16 was in, and you didn't want it to be</p> <p>17 advertised or announced and filled before you</p> <p>18 got back from vacation; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Let me stop there. Okay?</p> <p>21 A. Okay.</p> <p>22 Q. I want to go back a little bit.</p> <p>23 A. Okay.</p>	<p>1 filled or held by an employee has to have that</p> <p>2 number. It's how it's tracked for payroll,</p> <p>3 time, and all that kind of stuff.</p> <p>4 Q. Okay. After you received that telephone call,</p> <p>5 did you provide that information to Margaret</p> <p>6 Leak?</p> <p>7 A. No, because I didn't know it. That was the</p> <p>8 first I'd heard about the position.</p> <p>9 Q. Did you seek to learn or find out the</p> <p>10 information she needed?</p> <p>11 A. No, sir.</p> <p>12 Q. What did you do, if anything?</p> <p>13 A. I wrote a note to Henry and told him that</p> <p>14 Margaret Leak called and what the information</p> <p>15 was that she wanted, and I left it on his desk.</p> <p>16 Q. So that was the day that she called, the day</p> <p>17 Ms. Leak called?</p> <p>18 A. Yes.</p> <p>19 Q. So you just simply wrote a note on what kind</p> <p>20 of paper?</p> <p>21 A. My recollection is that it was -- I know the</p> <p>22 first time that I wrote it, it was on a torn</p> <p>23 piece of yellow paper like those legal</p>
Page 31	Page 33
<p>1 Q. You were saying that the first conversation</p> <p>2 you had with Ms. Owens was in late '04 or</p> <p>3 early '05.</p> <p>4 A. Yes.</p> <p>5 Q. How do you know that?</p> <p>6 A. Because when I found out from the State</p> <p>7 Personnel Department about it is when I talked</p> <p>8 to Joan, so that would have had to have been</p> <p>9 in advance of me going to talk to the</p> <p>10 Commissioner, which was some weeks prior to me</p> <p>11 planning to go on vacation.</p> <p>12 Q. How did you find out from the State Personnel</p> <p>13 Department?</p> <p>14 A. Margaret Leak called me. She called my</p> <p>15 extension, and she said that she needed more</p> <p>16 information to set up the position control</p> <p>17 number for it. And she said specifically what</p> <p>18 she needed, but I don't remember what it was</p> <p>19 she said at this point.</p> <p>20 Q. What is a position control number?</p> <p>21 A. It is how a position is identified and tracked</p> <p>22 in the Governmental Human Resource System.</p> <p>23 Every position that's either going to be</p>	<p>1 papers. But I have a terrible handwriting,</p> <p>2 and I scribbled it and I don't know if I</p> <p>3 rewrote it or not. But I know I wrote down</p> <p>4 what she said and wrote down her phone number</p> <p>5 and laid it on his desk.</p> <p>6 Q. What job did she tell you she was asking</p> <p>7 about?</p> <p>8 A. To the best of my recollection, she called it</p> <p>9 Departmental Assistant Personnel Manager. And</p> <p>10 there was another position she asked for at</p> <p>11 the same time, and I don't remember that</p> <p>12 title. Materials Manager or something.</p> <p>13 Q. So would that have been included on your note</p> <p>14 to Henry as well?</p> <p>15 A. Yes.</p> <p>16 Q. But you're sure she said Departmental</p> <p>17 Assistant Personnel Manager?</p> <p>18 A. No, sir. I just know that by what she called</p> <p>19 it, I knew that it was going to be a position</p> <p>20 of a personnel assistant to Henry, so I'm</p> <p>21 assuming that's what she would -- I guess I'm</p> <p>22 assuming. I don't know. I know that that's</p> <p>23 when I thought, oh, they're creating an</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 34	Page 36
<p>1 assistant position in Personnel. And to the</p> <p>2 best that I recall, it said Departmental</p> <p>3 Assistant Personnel Manager.</p> <p>4 Q. At what point in time after this telephone</p> <p>5 conversation with Margaret Leak did you first</p> <p>6 speak with Ms. Owens about the position?</p> <p>7 A. I don't remember, but I would assume it was</p> <p>8 probably the same day because I wanted to know</p> <p>9 if I was the only one in the office that</p> <p>10 didn't know about it.</p> <p>11 Q. Tell me about that conversation.</p> <p>12 A. I really don't remember any details. In my</p> <p>13 mind, it was, did you know that they're</p> <p>14 creating an assistant position? It probably</p> <p>15 went along the lines, no, wonder why we don't</p> <p>16 know about it. Wonder why it wasn't</p> <p>17 discussed. It must be for Marilyn.</p> <p>18 Q. So this would have been late '04, early '05?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So you spoke with Ms. Owens, and you said, do</p> <p>21 you know about it?</p> <p>22 A. Uh-huh. (Positive response.)</p> <p>23 Q. And she said no?</p>	<p>1 know who said what or -- if either one of us</p> <p>2 actually said those words. I don't remember.</p> <p>3 That's just -- I remember at the time that I</p> <p>4 believed that, and I believe that she was in</p> <p>5 agreement with it.</p> <p>6 Q. So your best recollection is that you knew at</p> <p>7 that time that both of you believed that the</p> <p>8 position was created for Marilyn?</p> <p>9 A. Yes.</p> <p>10 Q. And that could have been because y'all</p> <p>11 commented about that?</p> <p>12 A. Could have been.</p> <p>13 Q. And the fact that y'all believed that was, I</p> <p>14 guess I would say, sort of like a -- I wonder</p> <p>15 why we don't know about it. Well, it must be</p> <p>16 for Marilyn. It's kind of like a</p> <p>17 justification.</p> <p>18 In other words, it must be for Marilyn</p> <p>19 and not for us, and that's why we don't know</p> <p>20 about it; is that what you're saying?</p> <p>21 MR. MOZINGO: Object to the form.</p> <p>22 Q. You can answer the question.</p> <p>23 A. Okay. Prior to us learning of this</p>
Page 35	Page 37
<p>1 A. Yes.</p> <p>2 Q. Can you remember anything else Ms. Owens said</p> <p>3 in response to that question?</p> <p>4 A. I don't even remember that specifically.</p> <p>5 Q. But anyway, then you said, I wonder why we</p> <p>6 don't know about it, right?</p> <p>7 A. Wonder why we don't know about it, yes.</p> <p>8 Q. And then which one of you said it must be for</p> <p>9 Marilyn?</p> <p>10 A. I don't know.</p> <p>11 Q. Let me make sure I've got it right. You said</p> <p>12 something to Ms. Owens after that -- Ms. Leak</p> <p>13 called you late in '04 or early '05, do you</p> <p>14 know about this position. Ms. Owens said no.</p> <p>15 You said, I wonder why we didn't know about</p> <p>16 it?</p> <p>17 A. Uh-huh. (Positive response.)</p> <p>18 Q. And then did you say it must be for Marilyn or</p> <p>19 did --</p> <p>20 A. I don't remember.</p> <p>21 Q. One of you said that?</p> <p>22 A. I can only say that we -- I know that we</p> <p>23 came -- that we both believed that. I don't</p>	<p>1 position -- I'll speak for myself, knowing</p> <p>2 that I believed that they were positioning</p> <p>3 Marilyn to take on a leadership position in</p> <p>4 our office, and I thought at that time that it</p> <p>5 was for Henry's position of Director.</p> <p>6 Henry had been making it known that he</p> <p>7 was going to retire or that he was going to</p> <p>8 get a job in Tuscaloosa, and his position</p> <p>9 would be opening. And we just began to notice</p> <p>10 that he took Marilyn with him to meetings</p> <p>11 during that time instead of Joan or myself.</p> <p>12 They just -- Their whole relationship dynamics</p> <p>13 seemed to have changed during that time.</p> <p>14 You know, and prior to that, he had</p> <p>15 put -- even though Marilyn, Joan, and I all</p> <p>16 were on the same level position, she had an</p> <p>17 office, and we remained in cubicles. So it</p> <p>18 was giving an impression that she already was</p> <p>19 something more than we were. So there was</p> <p>20 just a general she's being groomed and</p> <p>21 positioned ...</p> <p>22 Q. She's getting preferential treatment?</p> <p>23 A. Getting ready to take on Henry's position when</p>

Page 38	Page 40
<p>1 he leaves, even to being assigned supervisory</p> <p>2 duties. There were a lot of factors going on</p> <p>3 that had us looking at it.</p> <p>4 Q. Let's do this then. Let's go back, I guess,</p> <p>5 past -- late -- go back past late 2004. Were</p> <p>6 the things that you just described going on</p> <p>7 before late 2004?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What I want to try to do, if it's</p> <p>10 possible, Ms. Hubbard, is to figure out</p> <p>11 when -- about when -- I mean, it's obviously</p> <p>12 impossible to be precise about it, but about</p> <p>13 when you believe this activity began, about</p> <p>14 when you think that the activity you described</p> <p>15 to me with Henry taking Marilyn with him to</p> <p>16 places, giving her an office instead of a</p> <p>17 cubicle, allowing her to undertake supervisory</p> <p>18 duties, otherwise giving her different types</p> <p>19 of treatment, about when did that begin?</p> <p>20 A. My best guess would be, it was around 2003.</p> <p>21 Q. Okay. Do you have any judgment as to when in</p> <p>22 2003 that may have begun?</p> <p>23 A. No, sir.</p>	<p>1 them.</p> <p>2 Q. You were sent to Greil and where?</p> <p>3 A. Tarwater.</p> <p>4 Q. Tarwater. Okay. Because the Commissioner was</p> <p>5 trying to combine the Human Resources parts of</p> <p>6 all of those closely geographically-related</p> <p>7 places --</p> <p>8 A. Correct.</p> <p>9 Q. -- like Tarwater and Greil. Tarwater in</p> <p>10 Elmore County, Greil in Montgomery County,</p> <p>11 right? Isn't Greil in Montgomery County?</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember when that was that you were</p> <p>14 sent to either of those places?</p> <p>15 A. It would have started shortly after my</p> <p>16 promotion, because that was on the</p> <p>17 announcement for my job is that this person</p> <p>18 would serve as -- in the personnel offices of</p> <p>19 those two facilities.</p> <p>20 Q. So it would have been closely after you were</p> <p>21 put into the Personnel Specialist III</p> <p>22 position?</p> <p>23 A. That's right. That's 2001 that we started</p>
Page 39	Page 41
<p>1 Q. The first quarter? Second quarter? Third</p> <p>2 quarter? Fourth quarter?</p> <p>3 A. I know that it was during the time that Joan</p> <p>4 and I were both being sent to facilities to</p> <p>5 act as personnel directors, and we were out of</p> <p>6 the office for -- for times ...</p> <p>7 Q. So you're saying it began when you and Joan</p> <p>8 were being sent out of the office to be --</p> <p>9 A. Personnel directors at different facilities.</p> <p>10 Q. At facilities?</p> <p>11 A. Uh-huh. (Positive response.)</p> <p>12 Q. Tell me about that. I'm not sure I understand</p> <p>13 that, the fact that the two of you were sent</p> <p>14 to other facilities. Which facility were you</p> <p>15 sent to?</p> <p>16 A. Originally, I was sent to both Tarwater and</p> <p>17 Greil. During -- there was a -- The</p> <p>18 Commissioner at that time was really behind a</p> <p>19 push to consolidate Human Resources at both --</p> <p>20 like, all the Tuscaloosa facilities and then</p> <p>21 at Central Office, Greil. You know, anything</p> <p>22 that was in a close proximity, instead of each</p> <p>23 one having their own office, we would combine</p>	<p>1 going.</p> <p>2 Q. So you're thinking that the activities you're</p> <p>3 telling me about where Henry began to give</p> <p>4 preferential treatment to Marilyn was around</p> <p>5 2001?</p> <p>6 A. No, sir, it wasn't that soon.</p> <p>7 Q. Wasn't that soon. All right. Is there any</p> <p>8 way we can figure out about when?</p> <p>9 A. I would guess that it was closer to the time</p> <p>10 that I was coming back to Central Office,</p> <p>11 because the pressures at that time, you</p> <p>12 know -- basically, I was asked to be a</p> <p>13 full-time personnel director on four days a</p> <p>14 week and still come back and do duties as a</p> <p>15 Personnel Specialist III in the office.</p> <p>16 I guess I tie it into that because I</p> <p>17 remember being surprised because -- it's</p> <p>18 basically I came back in one day, and Marilyn</p> <p>19 had an office. I talked to Marilyn about it,</p> <p>20 and she said that because Joan and I had</p> <p>21 offices at a facility, then she should have an</p> <p>22 office at Central Office. And so that's how I</p> <p>23 tie it in all to that time frame.</p>

Page 42	Page 44
<p>1 Q. What you're saying, you're the Personnel 2 Director for Tarwater and Greil? 3 A. I served in that capacity. 4 Q. Served in that capacity four days a week, two 5 days at Tarwater, two days at Greil? Is that 6 the way it went? 7 A. I think it was intended to go that way, but 8 Tarwater was the first place that I went to, 9 and I couldn't do it in two days a week. 10 There was a phenomenal amount of work because 11 both of those facilities had been without a 12 personnel director for a considerable amount 13 of time and it was left in the hands of a 14 Personnel Assistant I, which is -- and you 15 have to be there to know that the things are 16 not going as they should. Do you know what I 17 mean? 18 Q. Sure. I hear you. 19 A. So I ended up spending a lot of time at 20 Tarwater, getting things -- setting up 21 procedures and trying to get some, you know, 22 organization in it, training the assistant in 23 things that they needed to do. And it took</p>	<p>1 Owens went; is that right? 2 A. It started out just me because it was in my 3 job announcement. And when they decided to 4 consolidate Human Resources, they moved Joan 5 from Greil to the Central Personnel Office. 6 Her position as a Personnel Manager I and 7 a Central Office position Personnel Specialist 8 III are lateral positions, same pay grade, and 9 so they just changed her classification and 10 kept her. 11 Q. I'm not sure I understand. Kept her where? 12 A. They moved her from Greil to Central Office to 13 consolidate, because they didn't want a 14 director at all the offices. 15 Q. So when Joan was moved from Greil to Central 16 Office, did she ever have to go back to other 17 facility offices the way you were going back? 18 A. If I remember right, Joan was still working on 19 Greil stuff from Central Office and would 20 still go to Greil in the beginning. 21 Q. So now you said -- I think you said that it 22 was about, what? You finished up your travel 23 work going back to Tarwater and Greil that</p>
Page 43	Page 45
<p>1 more time than they originally, I think, 2 intended for it to. 3 Q. So you had an office at Tarwater and an office 4 at Greil? 5 A. I didn't really consider that my office at 6 Tarwater. I did work out of an office at 7 Tarwater, but, you know -- yeah. 8 Q. How about Greil? 9 A. Yes. 10 Q. You did have an office at Greil? 11 A. I don't think I did in the beginning. They 12 had two offices kind of personnel-related, I 13 think. I'm not even sure that's true. I know 14 they had one, and when I left they had two. 15 Q. How do we say it, then? You worked in an 16 office at Tarwater and had an office at Greil, 17 or do we say it a different way? 18 A. I worked in -- we were not in cubicles at 19 Tarwater or Greil is the way that I would say 20 it. 21 Q. Let me see here. 22 A. I'm sorry. 23 Q. Now, you said we went. You meant you and Joan</p>	<p>1 this what you've described as preferential 2 treatment -- 3 A. No, sir. 4 Q. -- began? 5 A. No, sir. 6 Q. No? Okay. Please correct me. 7 A. It was an evolved process with these Tarwater- 8 Greil offices. So for some time -- I can't 9 say, maybe four to six months, I was going to 10 Tarwater and Joan was still trying to do Greil 11 stuff and do Central Office stuff. And then 12 Henry would say he needed me back at Central 13 Office. And so in the course of it, then Joan 14 began to help going back. And she would go to 15 Tarwater and then I went to Greil. I don't 16 know really now -- it wasn't like a plan. It 17 was just, oh, well, can you go to Greil today 18 because we need this, you know. 19 And then it ended up being -- because MI 20 and MR are very different facilities, and the 21 personnel aspects are very different. It's 22 hard to transition between the two, not 23 impossible, but difficult. So that eventually</p>



Page 46	Page 48
<p>1 it evolved into Joan would be responsible for</p> <p>2 Tarwater and I would be responsible for Greil</p> <p>3 while we also maintained our duties at Central</p> <p>4 Office.</p> <p>5 Q. Okay.</p> <p>6 A. And I'm saying that probably -- it was</p> <p>7 probably at least two years into this process</p> <p>8 before I began to think anything about what</p> <p>9 was going on with Marilyn at Central Office.</p> <p>10 Q. Two years into the process of you traveling</p> <p>11 and Joan traveling, too, right?</p> <p>12 A. Yes.</p> <p>13 Q. Both of you were traveling. I'm not trying to</p> <p>14 get you to say you were traveling at the same</p> <p>15 time or that you were traveling in equal</p> <p>16 amounts.</p> <p>17 A. Right.</p> <p>18 Q. But what you're saying is that you were at</p> <p>19 Central Office, also going to Tarwater</p> <p>20 sometimes to work and sort of be their</p> <p>21 personnel person there, and Joan was working</p> <p>22 in Central Office and going to Greil</p> <p>23 sometimes, as necessary, to do Central</p>	<p>1 that I wondered was why she was being given an</p> <p>2 office when I was not given an office, even</p> <p>3 though I had as responsible or more</p> <p>4 responsible position than she did. And her --</p> <p>5 When I talked to her, she just said that she</p> <p>6 thought she deserved one because Joan and I</p> <p>7 had one.</p> <p>8 The first time that her supervising other</p> <p>9 people in the office -- because prior to this</p> <p>10 point, Personnel Specialists didn't</p> <p>11 supervise. They all reported to the Human</p> <p>12 Resource Director. I think it was Henry that</p> <p>13 said, well, you and Joan supervise people, so</p> <p>14 we need to let Marilyn supervise people.</p> <p>15 Q. Did that come up because you inquired about</p> <p>16 it?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ask Henry specifically, why does</p> <p>19 Marilyn have an office and we've got to work</p> <p>20 out of cubicles?</p> <p>21 A. No, I asked Marilyn.</p> <p>22 Q. Okay. Let's approach this time frame from a</p> <p>23 different angle. Approach it from -- How long</p>
Page 47	Page 49
<p>1 Office -- to do personnel work there; am I</p> <p>2 right about that?</p> <p>3 A. In the beginning. Uh-huh. (Positive</p> <p>4 response.)</p> <p>5 Q. And then -- did you say about two years into</p> <p>6 that process?</p> <p>7 A. Well, the process had changed in two years.</p> <p>8 So at this point, I was primarily Greil, and</p> <p>9 she was primarily Tarwater. I don't think</p> <p>10 that's particularly significant except that --</p> <p>11 Q. It's really not.</p> <p>12 A. Just trying to be accurate.</p> <p>13 Q. But are we talking about two years into the</p> <p>14 process of you and Ms. Owens being in Central</p> <p>15 Office and, yet, beginning to travel to</p> <p>16 outside facilities, two years after that began</p> <p>17 that you began to realize or see this</p> <p>18 treatment that you've discussed with me, that</p> <p>19 you've told me about between Henry and Marilyn?</p> <p>20 A. I think the first time -- I remember it -- I</p> <p>21 can say that I had been working at Greil a</p> <p>22 considerable amount of time when I first began</p> <p>23 to wonder. And it was -- One of the things</p>	<p>1 was it before you found out about the</p> <p>2 potential creation or the creation of this</p> <p>3 Departmental Personnel Assistant Manager</p> <p>4 position, how long was it before that that you</p> <p>5 asked Marilyn about her office?</p> <p>6 A. I asked Marilyn about her office before I knew</p> <p>7 anything about that position.</p> <p>8 Q. Right. I knew you did.</p> <p>9 A. I'm sorry.</p> <p>10 Q. I was wondering how long -- You found out</p> <p>11 about the position because of a call from this</p> <p>12 lady that you told me about at State Personnel</p> <p>13 in late '04 or early '05. So how long was it</p> <p>14 before that that you asked Marilyn about her</p> <p>15 office? About. Give me your best judgment.</p> <p>16 A. Then let me think a second and I'll give you</p> <p>17 my best judgment.</p> <p>18 Q. Okay.</p> <p>19 MR. MOZINGO: I'm going to instruct</p> <p>20 you not to guess or speculate.</p> <p>21 THE WITNESS: Sorry.</p> <p>22 Q. I don't want you to guess.</p> <p>23 MR. MOZINGO: If you know, tell</p>

Page 50	Page 52
<p>1 him. If you don't know, don't</p> <p>2 guess or speculate.</p> <p>3 A. I really --</p> <p>4 MR. NIX: No, wait a minute. Wait</p> <p>5 just a minute. Wait just a</p> <p>6 minute. She can give a</p> <p>7 judgment, Flynn, and that's not</p> <p>8 guessing, and that is not</p> <p>9 speculation. She can think</p> <p>10 back --</p> <p>11 MR. MOZINGO: If she knows.</p> <p>12 MR. NIX: She can think back to the</p> <p>13 facts, and she can consider it</p> <p>14 and she can give me her best</p> <p>15 judgment. That's all I'm asking</p> <p>16 for. Don't tell her not to give</p> <p>17 me an answer.</p> <p>18 MR. MOZINGO: I don't disagree with</p> <p>19 that. I said if she knows,</p> <p>20 answer.</p> <p>21 MR. NIX: What you said basically</p> <p>22 gave her the impression that she</p> <p>23 had to absolutely know the</p>	<p>1 guessing what you asked her.</p> <p>2 MR. NIX: I'm not asking her to</p> <p>3 speculate. I don't want her to</p> <p>4 speculate, and I don't want her</p> <p>5 to guess. But I would like for</p> <p>6 her to -- and I would appreciate</p> <p>7 for her to engage in the process</p> <p>8 of attempting to arrive at an</p> <p>9 answer. That's all.</p> <p>10 MR. MOZINGO: Re-ask the question in</p> <p>11 the guidelines that you just</p> <p>12 asked. Okay? Because that's</p> <p>13 not the way I heard it, the way</p> <p>14 you just described your</p> <p>15 question.</p> <p>16 If you want to re-ask it in</p> <p>17 those guidelines, that's fine,</p> <p>18 but that's not how I heard that</p> <p>19 question being asked initially.</p> <p>20 Q. Ms. Hubbard, in a deposition like this, it's</p> <p>21 obvious that we're not going to be able to pin</p> <p>22 down facts to specific dates unless you've got</p> <p>23 a calendar or something. You know? It's just</p>
Page 51	Page 53
<p>1 answer to give me an answer.</p> <p>2 And that's not the law, and</p> <p>3 that's not the way this thing is</p> <p>4 supposed to operate.</p> <p>5 MR. MOZINGO: I just said don't</p> <p>6 guess or speculate. If you know</p> <p>7 the answer, give him the answer.</p> <p>8 MR. NIX: That's not the law. I</p> <p>9 asked her for her best judgment.</p> <p>10 MR. MOZINGO: That's fine. That's</p> <p>11 fine.</p> <p>12 MR. NIX: How can anyone know their</p> <p>13 best judgment? They have to</p> <p>14 give you a judgment. What you</p> <p>15 said was, don't speculate, don't</p> <p>16 guess. If you know, give him an</p> <p>17 answer. How can she know?</p> <p>18 MR. MOZINGO: If you know based upon</p> <p>19 your description and can answer</p> <p>20 it, do it, but don't guess or</p> <p>21 speculate. That's not</p> <p>22 unreasonable. That's not</p> <p>23 unfair. And I'm not second-</p>	<p>1 impossible to do. So the law says, well, a</p> <p>2 witness can give a judgment if they have a</p> <p>3 judgment.</p> <p>4 So what I'm asking for really -- I mean,</p> <p>5 I don't want you to guess. I don't want you</p> <p>6 to speculate. That doesn't help any of us.</p> <p>7 What I really would like is your best judgment</p> <p>8 as to approximately when the time frame was.</p> <p>9 What I'm doing now is I'm going from a</p> <p>10 different direction than we went from before.</p> <p>11 Okay? Before, I went from kind of the</p> <p>12 beginning of you and Ms. Owens beginning to go</p> <p>13 to these facilities. That sounded like it got</p> <p>14 to be a little complex, so I went back and I</p> <p>15 said, well, why don't we go from the time</p> <p>16 frame of when you got that telephone call and</p> <p>17 found out that this job existed, about how</p> <p>18 long before that was it that you talked to</p> <p>19 Marilyn about her office.</p> <p>20 And I don't remember how we got to the</p> <p>21 best judgment question, but what I'd like for</p> <p>22 you to do, if you can, is to give me your best</p> <p>23 judgment as to approximately how long it was</p>



Page 54	Page 56
<p>1 before you received a telephone call about --</p> <p>2 from the Personnel Department -- from Margaret</p> <p>3 Leak asking for more information about the</p> <p>4 job. About how long was it in your best</p> <p>5 recollection or your best judgment that you</p> <p>6 talked to Marilyn about her having an office?</p> <p>7 A. I'm trying to isolate Marilyn -- asking</p> <p>8 Marilyn about the office to the sense of her</p> <p>9 being positioned. I would say six months to a</p> <p>10 year maybe, and that's just the best I can</p> <p>11 figure probably.</p> <p>12 Q. That's fine. That's all I need. That's all I</p> <p>13 wanted. Six months to one year or so</p> <p>14 before --</p> <p>15 A. It could have been longer than that. I didn't</p> <p>16 mean to interrupt you. But it could have been</p> <p>17 longer than that, because it wasn't just that</p> <p>18 she got an office and I thought, oh, they're</p> <p>19 positioning her. Things were building. So</p> <p>20 I'm not real clear in my mind.</p> <p>21 Q. About when you asked her about the office?</p> <p>22 A. Yes. She was not in the office when I asked</p> <p>23 her about it. I remember that.</p>	<p>1 responsibility and yet having one in an office</p> <p>2 and there were other vacant offices at that</p> <p>3 time that they chose not to utilize. And I</p> <p>4 just couldn't understand why that was.</p> <p>5 Q. And that's the reason you asked Marilyn about</p> <p>6 the office?</p> <p>7 A. Yes, to the best that I can recall.</p> <p>8 Q. All right. And what was said by somebody,</p> <p>9 whether -- was it Marilyn or Henry that</p> <p>10 said -- gave you the answer?</p> <p>11 A. Marilyn. I didn't talk to Henry about the</p> <p>12 office at that time.</p> <p>13 Q. Okay. Am I correct that she said, well, y'all</p> <p>14 have an office in your outlying locations, and</p> <p>15 I need an office here or I should have an</p> <p>16 office here, something like that?</p> <p>17 A. That's correct.</p> <p>18 Q. Is that the entirety of the conversation as</p> <p>19 you recall it?</p> <p>20 A. No.</p> <p>21 Q. Can you keep going with it, then?</p> <p>22 A. I shared with her that I didn't think that it</p> <p>23 was appropriate because it gave an impression</p>
Page 55	Page 57
<p>1 Q. When you asked her about it, you knew she had</p> <p>2 been assigned the office and she hadn't moved</p> <p>3 in; is that --</p> <p>4 A. That she was getting an office, and I don't</p> <p>5 know how I knew that either.</p> <p>6 Q. Okay. I think what I heard you say -- and you</p> <p>7 correct me if I'm wrong -- I think you were</p> <p>8 saying that before you really asked her about</p> <p>9 the office, things had been building up</p> <p>10 anyway, and you were beginning to see things</p> <p>11 that made you think Henry was giving her</p> <p>12 preferential treatment or special treatment or</p> <p>13 training her to take over or whatever; is</p> <p>14 that --</p> <p>15 A. Not when I asked her about her office.</p> <p>16 Q. Okay. So when you asked her about the office,</p> <p>17 you had no curiosity about whether Henry was</p> <p>18 doing this or that or the other with Marilyn</p> <p>19 specifically for the purpose of kind of</p> <p>20 grooming her or giving her preferential</p> <p>21 training or treatment?</p> <p>22 A. I just couldn't understand the rationale</p> <p>23 behind having three people of equal</p>	<p>1 that she was at a higher level than I was.</p> <p>2 And at this time, I felt that I was being</p> <p>3 asked to do a great deal above and beyond what</p> <p>4 a Personnel Specialist would generally do. So</p> <p>5 I had already been experiencing frustration in</p> <p>6 that regard, being asked to do a tremendous</p> <p>7 job in a great learning curve with very little</p> <p>8 help from a supervisor.</p> <p>9 So I'm feeling all this, you know, like,</p> <p>10 man, I'm really having to put out. I'm really</p> <p>11 giving a lot to the Department, and yet she's</p> <p>12 being treated as though she's the one that's</p> <p>13 making all this contribution. And I just</p> <p>14 remember sharing with her that I didn't think</p> <p>15 it was appropriate that people would say,</p> <p>16 well, Marilyn must be something other than</p> <p>17 Lynn because she's in an office.</p> <p>18 Q. Okay. So what did she say to that?</p> <p>19 A. She just -- the best that I recall, she just</p> <p>20 repeated what she said earlier.</p> <p>21 Q. Any more to that conversation?</p> <p>22 A. Huh-uh. (Negative response.)</p> <p>23 Q. No?</p>

Page 58	Page 60
<p>1 A. Not that I remember. Sorry.</p> <p>2 Q. That's all right. So let's go from that</p> <p>3 point, then. Okay? Because I think I heard</p> <p>4 you say that prior to this, you had not</p> <p>5 noticed any -- anything like the things you're</p> <p>6 describing, with Henry taking Marilyn</p> <p>7 places -- when he went to meetings, for</p> <p>8 example, or asking her to supervise something</p> <p>9 or doing other things.</p> <p>10 A. Those specific things, right, nothing had</p> <p>11 happened prior to that.</p> <p>12 Q. Well, what had happened prior to that?</p> <p>13 A. I had always felt like Marilyn was never asked</p> <p>14 to do the same kind of jobs as a Personnel</p> <p>15 Specialist III that I was asked to do or even</p> <p>16 that Joan was asked to do.</p> <p>17 Q. Okay. When you say I had always felt, what do</p> <p>18 you mean by that?</p> <p>19 A. There was just a general feeling that there</p> <p>20 were things that Henry would ask me or Joan</p> <p>21 that he would never ask Marilyn to do, like</p> <p>22 going to those facilities.</p> <p>23 I will say that Marilyn volunteered to</p>	<p>1 MR. NIX: Sure. If you want to</p> <p>2 now -- I'm pretty easy. If you</p> <p>3 need a break, we can take it.</p> <p>4 THE WITNESS: I would like to.</p> <p>5 (Brief recess was taken.)</p> <p>6 (The following was read:</p> <p>7 Question: Are you saying you had</p> <p>8 always felt -- are you saying</p> <p>9 that you had felt that way</p> <p>10 pretty much from the time you</p> <p>11 got to the Central Office or</p> <p>12 after you had been there long</p> <p>13 enough to make observations,</p> <p>14 anyway, however long that took,</p> <p>15 six months, a year or whatever</p> <p>16 that you and Ms. Owens were</p> <p>17 being asked by Henry to do</p> <p>18 things that he did not ask</p> <p>19 Marilyn to do?</p> <p>20 Answer: I can't tie in Ms. Owens</p> <p>21 with it because she came at a</p> <p>22 later time. In my opinion,</p> <p>23 Ms. Benson had the least amount</p>
Page 59	Page 61
<p>1 come out there, but when Marilyn would go to a</p> <p>2 facility, basically she would sit down. If</p> <p>3 things came up, she would, you know, make note</p> <p>4 of what came up, and it's still left to</p> <p>5 somebody else to deal with when they go back</p> <p>6 out there, you know.</p> <p>7 Q. Are you saying you had always felt -- are you</p> <p>8 saying that you had felt that way pretty much</p> <p>9 from the time you got to the Central Office or</p> <p>10 after you had been there long enough to make</p> <p>11 observations, anyway, however long that took,</p> <p>12 six months, a year or whatever that you and</p> <p>13 Ms. Owens were being asked by Henry to do</p> <p>14 things that he did not ask Marilyn to do?</p> <p>15 A. I can't tie in Ms. Owens with it because she</p> <p>16 came at a later time. In my opinion,</p> <p>17 Ms. Benson had the least amount of</p> <p>18 responsibilities at the office for as long as</p> <p>19 I had been in there.</p> <p>20 Q. Okay.</p> <p>21 THE WITNESS: And we don't have to</p> <p>22 break right now, but can we kind</p> <p>23 of have that in our mind?</p>	<p>1 of responsibilities at the</p> <p>2 office for as long as I had been</p> <p>3 in there.)</p> <p>4 Q. Now, can you give me a brief sketch of what</p> <p>5 caused you to form that opinion?</p> <p>6 A. Just observation of the office itself. That's</p> <p>7 really all, just a general observation of what</p> <p>8 everybody's duties were and how they went</p> <p>9 about fulfilling them.</p> <p>10 Q. Can you give me an example of how that -- how</p> <p>11 you observed that or what you observed that</p> <p>12 caused you to think that? Give me an example</p> <p>13 of what you observed.</p> <p>14 A. I do remember a time when I walked to</p> <p>15 Marilyn's desk and she had a pay plan out.</p> <p>16 And it actually -- I was kind of like, oh,</p> <p>17 sorry, because I just didn't expect her to be</p> <p>18 actually working on something.</p> <p>19 Q. You what?</p> <p>20 A. I didn't really -- I had never seen her</p> <p>21 actually working at her desk on State stuff.</p> <p>22 Do you know what I'm saying?</p> <p>23 Q. Not really.</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 62	Page 64
<p>1 A. Just that, that -- and I can't say some of 2 this wasn't hearsay from other people in the 3 office, but my general remembrance is, she 4 worked on wage and class studies, which I 5 guess were salary surveys. And at that time, 6 there weren't a lot of those. She didn't read 7 applications during that time. She didn't 8 work on -- 9 I'm sorry. 10 Q. I was holding my hand up to ask you a 11 question. I don't want to necessarily stop 12 you. 13 A. Okay. 14 Q. You were saying at that time -- 15 A. Right. 16 Q. -- she worked on wage and class studies, and 17 there weren't that many. So I guess what I 18 was trying to make sure I fully understood was 19 kind of the time frame you're talking about. 20 A. When I first came in to Personnel. 21 Q. Okay. Okay. I'm sorry. So you walked to 22 Marilyn's desk, and she had out some type of 23 what?</p>	<p>1 Commie Carter came after -- 2 Q. Did you say Gladys Francisco? 3 A. There used to be a lady, Gladys Francisco that 4 worked in our office. 5 Q. Okay. 6 A. But Commie was already there, too, so I may 7 have that confused. But in my recollection, 8 Commie handled the actual personnel 9 transactions, the paperwork and screenings 10 that had to be effected to accomplish a 11 personnel action. 12 Q. Okay. How does that all relate to Marilyn 13 Benson? 14 A. Well, that didn't leave much left over to do 15 in my mind. 16 Q. Are you saying, then, Ms. Hubbard, that you in 17 that time frame did not know what Marilyn did? 18 A. I did not see what Marilyn did. That's 19 correct. 20 Q. At this time, who did you report to, the time 21 you were just talking about? 22 A. Sue Smitherman. 23 Q. What was her position?</p>
Page 63	Page 65
<p>1 A. A pay plan or something to that effect. 2 Q. So what you're saying is that you did not 3 expect her to be working on something for the 4 Department at her desk? 5 A. Yeah. That sounds harsh, but, yes, that's 6 true. 7 Q. And then you were giving me examples of what 8 you're talking about. If you don't mind, 9 would you start back there now that we have a 10 time date. 11 A. I remember that Barbara Boles worked on the 12 exempt selection, so she did all the 13 applications and rating applications and 14 announcing jobs. 15 Richard Hamilton worked with the merit 16 system and did most of the things related to 17 hiring merit system people. Any information 18 regarding the merit system, like if they had 19 pay grade increases or something, he got that 20 out and communicated it to everybody. 21 Gladys Francisco I would think was there 22 when I first got there. And in my mind, she 23 and Commie probably did about the same thing.</p>	<p>1 A. I think she was a Personnel Assistant II. And 2 she served as the Director's assistant as well 3 in that capacity, but her classification, I 4 think, was Personnel Assistant II the best 5 that I can recall. 6 Q. Reported to Sue Smitherman, and she was -- 7 like, what was her title? 8 A. Personnel Assistant II I think was her actual 9 classification. 10 Q. Okay. 11 A. I don't know if she had a working title that 12 was different from that. 13 Q. All right. Personnel Assistant II. And who 14 was the Director of the Department? 15 A. Butch King. 16 Q. Was this before or after you began going to 17 Tarwater and Greil? 18 A. Way before. 19 Q. Way before that you're telling me about. 20 You said something about rumors a minute 21 ago, you had heard rumors. 22 A. No, sir. 23 Q. You didn't say that?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 66	Page 68
<p>1 A. I don't remember saying anything about a</p> <p>2 rumor.</p> <p>3 Q. Did you hear people talking about what Marilyn</p> <p>4 did or what Marilyn didn't do?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Was this in this same time frame that you were</p> <p>7 just telling me about, when you first came and</p> <p>8 way before you started going to Tarwater and</p> <p>9 Greil?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Can you give me some examples of that?</p> <p>12 A. In my recollection, Barbara Boles or Commie</p> <p>13 Carter probably had that same opinion about</p> <p>14 what Marilyn's job duties were.</p> <p>15 Q. Barbara Boles?</p> <p>16 A. Uh-huh. (Positive response.)</p> <p>17 Q. B-O-L-L-S?</p> <p>18 A. B-O-L-E-S.</p> <p>19 Q. When you say in your opinion, Barbara Boles</p> <p>20 and Commie Carter had that same opinion about</p> <p>21 what you've described -- in other words, that</p> <p>22 Marilyn really didn't do a lot of work -- does</p> <p>23 that mean that both Barbara Boles and Commie</p>	<p>1 workload or her work quantity or whatever? It</p> <p>2 was just, I want to say, an impression, I</p> <p>3 think, but you may not have said that word.</p> <p>4 MR. NIX: Do you want to ...</p> <p>5 (The following was read:</p> <p>6 Answer: I don't remember</p> <p>7 specifics. That was just an</p> <p>8 impression, that they did more</p> <p>9 than she did, I guess.)</p> <p>10 Q. Now, whose impression do you mean? Was it</p> <p>11 your impression or was it their impression?</p> <p>12 A. That was my impression that they believed</p> <p>13 that.</p> <p>14 Q. Okay. Based on what?</p> <p>15 A. Just little comments probably. I do not</p> <p>16 remember specific comments.</p> <p>17 Q. Do we have -- Do you have an approximate year</p> <p>18 you're talking about in terms of the time</p> <p>19 frame of this impression you had?</p> <p>20 A. Whenever we determined that I went to</p> <p>21 Personnel. That was probably a year or two</p> <p>22 years into it I would guess. I don't know for</p> <p>23 sure.</p>
Page 67	Page 69
<p>1 Carter commented to you about Marilyn's work?</p> <p>2 A. I believe so.</p> <p>3 Q. Or lack of work?</p> <p>4 A. I believe so.</p> <p>5 Q. And it was in this time frame from the time</p> <p>6 you first got there to the time that you began</p> <p>7 traveling to Tarwater and Greil?</p> <p>8 A. It was not when I first got there. It was</p> <p>9 some time after that --</p> <p>10 Q. About how long?</p> <p>11 A. -- that they said anything about her, I think.</p> <p>12 I don't know.</p> <p>13 Q. Was it before you started going to Tarwater</p> <p>14 and Greil?</p> <p>15 A. Oh, yes.</p> <p>16 Q. And what did they say?</p> <p>17 A. I don't remember specifics. That was just an</p> <p>18 impression, that they did more than she did, I</p> <p>19 guess.</p> <p>20 Q. Let me make sure I understand you. Okay? Are</p> <p>21 you saying that you don't remember anything</p> <p>22 they said specifically, speaking of Barbara</p> <p>23 Boles and Commie Carter, about Marilyn's</p>	<p>1 Q. Is there anything else in terms of a comment</p> <p>2 or something somebody said to you or an</p> <p>3 impression you got from just comments that you</p> <p>4 can't remember, but I mean just comments that</p> <p>5 Marilyn did not work much? Is there anything</p> <p>6 else other than what you've just told me?</p> <p>7 A. And my observations of what went on in the</p> <p>8 office and what their duties were. That's it.</p> <p>9 Q. What observations did you make in this time</p> <p>10 frame with regard specifically to Marilyn that</p> <p>11 led you to believe she didn't do much?</p> <p>12 A. I never observed her doing much. You know, I</p> <p>13 didn't provide her any assistance. I was the</p> <p>14 support for all of the Specialists. I just</p> <p>15 never saw anything.</p> <p>16 Q. Well, I mean, was she sitting at her desk with</p> <p>17 her legs propped up watching TV or was she --</p> <p>18 A. She read her Bible a lot.</p> <p>19 Q. What else?</p> <p>20 A. That's all I can really remember.</p> <p>21 Q. Do you know what Marilyn Benson's job</p> <p>22 assignment was in the Central Personnel Office</p> <p>23 in this time frame that we've been talking</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 70	Page 72
<p>1 about?</p> <p>2 A. No, sir.</p> <p>3 Q. Isn't it possible that she could have had a</p> <p>4 job assignment you were unaware of that she</p> <p>5 worked on and you weren't really aware of the</p> <p>6 fact that she was working on it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. So the impression you had that Marilyn didn't</p> <p>9 seem to do as much as other people in the</p> <p>10 office could have been a misimpression based</p> <p>11 on your lack of understanding of her job</p> <p>12 assignment? Would that be correct?</p> <p>13 A. I can't see that it would have been a big</p> <p>14 difference without me knowing it, but, yes,</p> <p>15 impressions are not always fact.</p> <p>16 Q. Let's go to the period of time when you first</p> <p>17 began to notice any kind of treatment by Henry</p> <p>18 toward Marilyn that led you to believe that</p> <p>19 she was receiving either special treatment or</p> <p>20 was being groomed for his job or whatever</p> <p>21 else. I can't remember everything else you</p> <p>22 said, but, I mean, that type of thing.</p> <p>23 Can you give me some examples of those</p>	<p>1 Q. And then you said that she signed letters --</p> <p>2 A. I saw one memo.</p> <p>3 Q. Okay. When was that?</p> <p>4 A. I don't know. I can't -- it was around -- it</p> <p>5 all was occurring around the same time, but I</p> <p>6 don't know ...</p> <p>7 Q. Was this all --</p> <p>8 A. I couldn't remember if it was before her</p> <p>9 position was announced or -- I don't remember.</p> <p>10 Q. Was it before you heard from the State</p> <p>11 Personnel office, from Margaret Leak, that</p> <p>12 they needed more information?</p> <p>13 A. I think it was after.</p> <p>14 Q. That she signed a memorandum?</p> <p>15 A. Uh-huh. (Positive response.)</p> <p>16 Q. Yes?</p> <p>17 A. Yes.</p> <p>18 Q. And that memorandum -- that's all right. That</p> <p>19 memorandum, what? Said something about her</p> <p>20 being the Senior Personnel Specialist?</p> <p>21 A. The only thing I remember about the memo was</p> <p>22 that it was signed Marilyn Benson, Senior</p> <p>23 Personnel Specialist.</p>
Page 71	Page 73
<p>1 things and give me an approximate time frame</p> <p>2 of when they occurred?</p> <p>3 A. I can remember examples better than time</p> <p>4 frames. I know that Marilyn began to sign</p> <p>5 letters and refer to herself as Senior</p> <p>6 Personnel Specialist.</p> <p>7 Q. How do you know that?</p> <p>8 A. Because I heard her introduce herself that</p> <p>9 way, and I saw a memo where she had signed it.</p> <p>10 Q. Who did you hear introduce herself to as the</p> <p>11 Senior Personnel Specialist?</p> <p>12 A. It was not an employee of the Department. I</p> <p>13 remember that it was an applicant, but I don't</p> <p>14 know if it was just a general applicant or</p> <p>15 somebody applying for a job in Personnel, but</p> <p>16 I remember it made an impression on me.</p> <p>17 Q. Was that the only time you heard her say that?</p> <p>18 A. That's the only time I remember her referring</p> <p>19 to herself as that, yes.</p> <p>20 Q. And you have no -- you have no time frame you</p> <p>21 can give us, no judgment or best judgment as</p> <p>22 to a time frame that this occurred?</p> <p>23 A. No.</p>	<p>1 Q. And do you know who the memo was sent to?</p> <p>2 A. No, sir.</p> <p>3 Q. Do you know what the memo was about?</p> <p>4 A. No, sir.</p> <p>5 Q. Did you ever talk to anybody about the memo?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you ever talk to anybody about this</p> <p>8 introduction that you say was made by</p> <p>9 Ms. Benson as the Senior Personnel Specialist?</p> <p>10 A. No, sir.</p> <p>11 Q. Did you make any notes about either of these</p> <p>12 events?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. So tell me again anything else -- we're</p> <p>15 talking about -- What you said earlier was</p> <p>16 that Henry Ervin began taking Marilyn around</p> <p>17 with him to meetings, began teaching her or</p> <p>18 doing things for her or with her that he did</p> <p>19 not do with either you or Ms. Owens. Am I</p> <p>20 right about saying that?</p> <p>21 A. I don't know anything about teaching her.</p> <p>22 Q. Explain it to me again, then. What was</p> <p>23 your -- What was your impression upon viewing</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 74

1 whatever it was?  
 2 A. That generally when Henry met with the  
 3 Associate Commissioner, he would take Marilyn  
 4 with him to meet with the Associate.  
 5 Q. What else?  
 6 A. That's the only thing I can tell you for sure  
 7 that I remember.  
 8 Q. When you say when Henry would meet with the  
 9 associate commissioners --  
 10 A. Associate Commissioner.  
 11 Q. Oh.  
 12 A. Of Administration.  
 13 Q. Oh.  
 14 A. Sorry.  
 15 Q. When Henry met with the Associate Commissioner  
 16 of Administration, he took Marilyn Benson with  
 17 him?  
 18 A. Yes.  
 19 Q. How many times?  
 20 A. I couldn't give you a number, just that it was  
 21 frequent.  
 22 Q. Over what period of time?  
 23 A. Impulsively, I'm saying a year, because it

Page 75

1 feels like a year, but I don't have a time of  
 2 reference for it.  
 3 Q. Well, I mean, do you recall approximately when  
 4 that began?  
 5 A. I know that it was before she was the  
 6 Departmental Assistant Personnel Manager. I  
 7 get tripped up over that, too.  
 8 Q. Was it before you got the telephone call from  
 9 Personnel, Ms. Leak?  
 10 A. After.  
 11 Q. You're saying that Henry started after that  
 12 telephone call you received from Ms. Leak --  
 13 A. I believe so.  
 14 Q. -- taking Marilyn with him to meet with the  
 15 Associate Commissioner; is that right?  
 16 A. Yes, sir.  
 17 Q. And who was the Associate Commissioner at that  
 18 time?  
 19 A. Otha Dillihay.  
 20 Q. Do you know about how many times Henry took  
 21 Marilyn to meet with Otha Dillihay?  
 22 A. Over a time period? I can just tell you it  
 23 was frequently.

Page 76

1 Q. Well, frequently is a pretty relative number,  
 2 you know. Is there any way we can figure out  
 3 a better numerical guide?  
 4 A. I don't know about numerically, but my  
 5 impression was that when he met with  
 6 Mr. Dillihay, he generally took Marilyn with  
 7 him, so however many times he would meet with  
 8 him, I guess.  
 9 Q. That occurred after you got the telephone call  
 10 is what I'm hearing you saying. That occurred  
 11 after you got that telephone call from  
 12 Ms. Leak at Personnel asking for more  
 13 information, right?  
 14 A. The best that I can recall, it was afterwards.  
 15 Q. What I thought you had said -- and, of course,  
 16 we have been talking about some things that  
 17 occurred before the telephone call. But what  
 18 I thought you had said was before the -- let  
 19 me think about this.  
 20 I may be wrong. It was -- I can't  
 21 remember now whether -- I'm all confused. I  
 22 can't remember now whether the initial line of  
 23 questioning began with your saying something

Page 77

1 about there had been other things going on  
 2 before this, whether "this" related to the  
 3 telephone call you got or whether "this"  
 4 related to the office, to her getting an  
 5 office.  
 6 Does that make sense?  
 7 A. No, sir. Say it one more time.  
 8 Q. You had said -- this is what I remember you  
 9 said, is that there were other things, too, so  
 10 that when Marilyn -- let's see.  
 11 Neither you nor Ms. Owens knew about the  
 12 job and you got the call that there was going  
 13 to be a job, you thought that it was probably  
 14 going to be a job that was being fit to  
 15 Marilyn, and you said there were other things  
 16 that caused you to think that that had  
 17 occurred -- I think that is right -- that had  
 18 occurred before you got the telephone call  
 19 that was contributory to your belief that that  
 20 job was therefor probably being created for  
 21 Marilyn.  
 22 A. We may have been jumping -- clumping some  
 23 answers together out of different time



Page 78	Page 80
<p>1 frames. There were things that went on prior</p> <p>2 to me knowing about there being a position,</p> <p>3 and then there were things that evolved and</p> <p>4 were gradually more progressive than that. I</p> <p>5 would group that in the latter.</p> <p>6 Q. You would group the things that evolved and</p> <p>7 got more prevalent in the latter part of the</p> <p>8 time frame, right?</p> <p>9 A. The going-to-the-meetings, yes.</p> <p>10 Q. In the latter part of the time frame?</p> <p>11 A. It was later on, more involved, yes.</p> <p>12 Q. Was that the only part of what we've discussed</p> <p>13 that was more involved than after the</p> <p>14 telephone call you got than before the</p> <p>15 telephone call you got from Personnel, from</p> <p>16 Ms. Leak?</p> <p>17 You told me about Commie Carter and your</p> <p>18 impression that her impression was that</p> <p>19 Marilyn didn't do much, right? Do you</p> <p>20 remember that?</p> <p>21 A. Commie and Barbara.</p> <p>22 Q. Commie and Barbara, right. So that was --</p> <p>23 that was before the telephone call that you</p>	<p>1 A. Uh-huh. (Positive response.)</p> <p>2 MR. MOZINGO: Answer out loud for</p> <p>3 the court reporter.</p> <p>4 A. I'm sorry. Yes. Yes.</p> <p>5 Q. And that there was therefor, in your view, not</p> <p>6 that much more to do after they had done all</p> <p>7 that.</p> <p>8 A. Yes.</p> <p>9 Q. And that that was one of the things that</p> <p>10 caused you to think that Marilyn did less work</p> <p>11 than the other people?</p> <p>12 A. Yes.</p> <p>13 Q. So that would have occurred before -- I think</p> <p>14 you have told me that occurred shortly after</p> <p>15 you got there and before you started going to</p> <p>16 the facilities.</p> <p>17 A. Yes.</p> <p>18 Q. Good. We're in good shape.</p> <p>19 A. Yes.</p> <p>20 Q. And then you told me that additionally, you</p> <p>21 had heard people talking --</p> <p>22 A. Yes.</p> <p>23 Q. -- about it, and I asked you about that, and</p>
Page 79	Page 81
<p>1 got from Personnel from Ms. Leak?</p> <p>2 A. My impression from Commie and Barbara was</p> <p>3 before all of this?</p> <p>4 Q. Right.</p> <p>5 A. Yes.</p> <p>6 Q. I guess what I'm trying to do is to divide it</p> <p>7 out and say, okay, what was before the</p> <p>8 telephone call you got from Ms. Leak and what</p> <p>9 was after the telephone call you got from</p> <p>10 Ms. Leak.</p> <p>11 A. Okay. You'll probably have to ask me</p> <p>12 specifically, because I don't know at this</p> <p>13 point.</p> <p>14 Q. I'll do my best. I really will.</p> <p>15 A. All right.</p> <p>16 Q. You gave me examples of the fact that Barbara</p> <p>17 Boles did job announcements, that Richard</p> <p>18 Hamilton did the merit system work, that</p> <p>19 Gladys Francisco did something. Do you</p> <p>20 remember what she did?</p> <p>21 A. Huh-uh. (Negative response.)</p> <p>22 Q. That Commie Carter handled the actual</p> <p>23 employment actions.</p>	<p>1 you said, well, Barbara Boles and Commie</p> <p>2 Carter, right?</p> <p>3 A. Yes.</p> <p>4 Q. You somehow got an impression that Barbara</p> <p>5 Boles and Commie Carter had the impression</p> <p>6 that Marilyn Benson did not do as much as they</p> <p>7 did.</p> <p>8 A. Yes.</p> <p>9 Q. And I wrote down here, that was a year or two</p> <p>10 into Ms. Hubbard going to the facilities.</p> <p>11 A. No.</p> <p>12 Q. That's not correct. Okay.</p> <p>13 A. That would have been a year or two to my going</p> <p>14 into the Central Personnel Office.</p> <p>15 Q. Within a year or two of your going into the</p> <p>16 Central Personnel ...</p> <p>17 A. Right.</p> <p>18 Q. Okay. And then you said you never observed</p> <p>19 Ms. Benson doing much --</p> <p>20 A. Correct.</p> <p>21 Q. -- in this time frame. You say you did see</p> <p>22 her read her Bible.</p> <p>23 A. Yes, sir.</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 82

1 Q. We talked about the fact that your impressions  
2 are just your impressions, and you did not  
3 know exactly what her job assignments were;  
4 isn't that right?  
5 A. Yes.  
6 Q. That she signed a memorandum -- And this was  
7 after the telephone call, right, she signed a  
8 memorandum as being the Senior Personnel  
9 Specialist?  
10 A. That was well after all those events you were  
11 just discussing.  
12 Q. Was it after the telephone call you got?  
13 A. Yes, it was after I knew that there was a  
14 position being created.  
15 Q. Was it before the announcement of the position  
16 on September 15, 2005?  
17 A. I don't know.  
18 Q. Was it after Ms. Benson had been selected as  
19 the Departmental Assistant Personnel Manager?  
20 A. No, sir. It was before.  
21 Q. It was before, that she signed the memo Senior  
22 Personnel ...  
23 A. (Nods head up and down.)

Page 83

1 MR. MOZINGO: Answer out loud.  
2 Q. I'm sorry.  
3 A. I'm sorry. You'll be amazed at how hard that  
4 is to remember.  
5 Q. It is hard to remember, and I didn't even  
6 catch it then.  
7 A. Do you want to re-ask the question, because  
8 I have no idea --  
9 MR. MOZINGO: Do you want the court  
10 reporter to re-ask the  
11 question?  
12 MR. NIX: Sure. That's fine.  
13 (The following was read:  
14 Question: Was it after Ms. Benson  
15 had been selected as the  
16 Departmental Assistant Personnel  
17 Manager?  
18 Answer: No, sir. It was before.  
19 Question: It was before, that she  
20 signed the memo Senior  
21 Personnel ...  
22 Answer: (Nods head up and down.)  
23 A. Yes.

Page 84

1 Q. I think you told me that you just did not  
2 remember when she introduced herself to  
3 somebody, whoever it was, as the Senior ...  
4 A. Yes.  
5 Q. One way or the other -- Okay. All right.  
6 Tell me anything else that -- when you got the  
7 telephone call and learned that a position of  
8 Departmental Assistant Personnel Manager was  
9 going to be created, that you thought that it  
10 was being created for Marilyn Benson.  
11 A. In regards to?  
12 Q. Give me every other reason that when you found  
13 out from Ms. Leak on the telephone that this  
14 position was being created, give me every  
15 reason that you thought it was being created  
16 for Marilyn Benson -- every other reason you  
17 haven't given me, I mean.  
18 A. To the best that I can remember, that should  
19 cover it.  
20 Q. After the telephone call from Ms. Leak, was  
21 there anything that happened that made you  
22 think that that job was going to be offered to  
23 Marilyn Benson?

Page 85

1 MR. MOZINGO: Other than what she's  
2 already testified to?  
3 MR. NIX: Right.  
4 A. This isn't that you're not clear, but my brain  
5 is fried. Would you say that one more time?  
6 Q. After you got the telephone call from Ms. Leak  
7 asking for more information so she could  
8 establish some type of, what? Job code or  
9 something?  
10 A. Yes, something to do with position number.  
11 Q. Okay. Was there anything other than Henry  
12 taking Marilyn to his meetings with the  
13 Associate Commissioner of Administration that  
14 occurred that caused you to think that the job  
15 was being created for Marilyn?  
16 A. The fact that Marilyn was the only person in  
17 Personnel that knew about it would be another  
18 reason.  
19 Q. When did you first learn that Marilyn knew  
20 about it?  
21 A. After I had given Henry the note that Margaret  
22 Leak called and wanted this information, it  
23 was either that day or the next day -- it was

Deposition of Lynn Hubbard

June 3, 2008

Page 86	Page 88
<p>1 in a very short time frame that Henry called a</p> <p>2 Personnel office staff meeting. And he just</p> <p>3 mentioned, we're still trying to get that</p> <p>4 assistant position filled, as though it had</p> <p>5 been public knowledge. And Marilyn was</p> <p>6 nodding as though she knew what he was talking</p> <p>7 about; whereas, no one else in the office that</p> <p>8 I know of other than Becky knew there was such</p> <p>9 a position.</p> <p>10 Q. This would have been at the staff meeting that</p> <p>11 occurred after you received the telephone call?</p> <p>12 A. Yes.</p> <p>13 Q. In that staff meeting, did you say anything to</p> <p>14 him or ask Mr. Benson [sic] any questions</p> <p>15 about the position?</p> <p>16 A. I did not.</p> <p>17 Q. Did you say anything in that staff meeting</p> <p>18 about this position?</p> <p>19 A. I did not.</p> <p>20 Q. Did anything else happen after the telephone</p> <p>21 call you got from Ms. Leak that caused you to</p> <p>22 think that that position, Departmental</p> <p>23 Assistant Personnel Manager, was being created</p>	<p>1 A. I know based on what Mr. Tarver said in his</p> <p>2 EEOC response.</p> <p>3 Q. Tell me what that is.</p> <p>4 A. I believe, if I remember right, he said that</p> <p>5 Mr. Dillihay, Marilyn, Henry, and I think</p> <p>6 himself had some input into those job</p> <p>7 specifications.</p> <p>8 Q. Did he ever say that Marilyn Benson had input</p> <p>9 in the job specs?</p> <p>10 A. That's the name I remember the most, is that</p> <p>11 he said Marilyn Benson, and I thought that was</p> <p>12 improper.</p> <p>13 Q. Let me ask you this. Who did the job -- who</p> <p>14 typed up job specifications when they were</p> <p>15 done?</p> <p>16 A. Generally, it would be Marilyn, Joan, or</p> <p>17 myself. We were the three -- not job</p> <p>18 specifications. I'm sorry. I was thinking of</p> <p>19 a job announcement.</p> <p>20 Marilyn, because she was on the Job</p> <p>21 Evaluation Committee, so I would assume she</p> <p>22 would -- if there were a new spec, she would</p> <p>23 be responsible for it.</p>
Page 87	Page 89
<p>1 for Marilyn?</p> <p>2 A. The fact that she knew about it and that if it</p> <p>3 was between Henry doing a job spec and Marilyn</p> <p>4 doing a job spec, I would assume that Marilyn</p> <p>5 actually wrote the job specification for the</p> <p>6 job.</p> <p>7 Q. Say that one more time. I'm sorry. I'm</p> <p>8 going ...</p> <p>9 A. I felt that if there was a job spec being</p> <p>10 written, that Marilyn must be the one writing</p> <p>11 it.</p> <p>12 Q. Is that all?</p> <p>13 A. Yes, sir. I think that's all.</p> <p>14 Q. When you say writing it, what do you mean? Do</p> <p>15 you mean just typing it up, or do you mean</p> <p>16 actually creating it?</p> <p>17 A. Developing it and typing it, mostly typing it</p> <p>18 up at that point.</p> <p>19 Q. At that point, who would have been developing</p> <p>20 it?</p> <p>21 A. I don't know who would have. At that time, I</p> <p>22 did not know who would have been.</p> <p>23 Q. Do you know now?</p>	<p>1 Q. So generally, Marilyn would be the one typing</p> <p>2 up the announcements anyway, right?</p> <p>3 A. Announcements, not job spec. But in this</p> <p>4 case, I would feel it's improper for Marilyn</p> <p>5 to type a job spec for a position that she</p> <p>6 intended to apply for. I would have thought</p> <p>7 that Henry would have gone to a personnel</p> <p>8 manager at the facilities that he knew would</p> <p>9 not be interested in the position for aid in</p> <p>10 coming up with that.</p> <p>11 Q. How do you know what Henry did in developing</p> <p>12 that spec?</p> <p>13 A. I don't know, other than what I read -- what</p> <p>14 Mr. Tarver wrote.</p> <p>15 Q. Do you know who ordinarily wrote up new job</p> <p>16 specs?</p> <p>17 A. I would say ordinarily, it would be Marilyn.</p> <p>18 Q. When I say write up, how do you interpret</p> <p>19 that? Do you think I'm asking you to create,</p> <p>20 or do you think I'm asking you to type it?</p> <p>21 A. I would say -- my answer was regarding working</p> <p>22 with people to create, and then typing.</p> <p>23 Q. How would you work with people to create job</p>

Page 90	Page 92
<p>1 specs?</p> <p>2 A. Well, if it was for a position in another</p> <p>3 division, she would probably consult with them</p> <p>4 as to what the job would be required to, then</p> <p>5 maybe see what similar jobs there might be out</p> <p>6 there that she could use as a basis for</p> <p>7 formulating qualifications or find out what</p> <p>8 the job does so she'd know what skill set of a</p> <p>9 person you would be looking for and that kind</p> <p>10 of thing, and then it would be reviewed by the</p> <p>11 Job Evaluation Committee for approval for</p> <p>12 recommendation to the Commissioner.</p> <p>13 Q. Have you told me everything about why you</p> <p>14 thought that the job spec was being written so</p> <p>15 that Marilyn could get the job?</p> <p>16 A. I believe so.</p> <p>17 Q. Can you tell me what it was that Courtney put</p> <p>18 in his response to the EEOC about Marilyn and</p> <p>19 the job specification and/or announcement?</p> <p>20 A. The only thing that I can remember that's</p> <p>21 pertinent to what you just asked was that he</p> <p>22 listed those people that had input in the</p> <p>23 development of the spec. That's what I recall</p>	<p>1 develop the job spec, and I said that all I</p> <p>2 was going by was what he -- Mr. Tarver,</p> <p>3 Courtney, put in his EEOC response as to who</p> <p>4 did it.</p> <p>5 Q. I've got it. Is that the reason that you</p> <p>6 included Marilyn Benson in this lawsuit, is</p> <p>7 what was in Courtney's response?</p> <p>8 A. The only reason? No, sir, I don't believe</p> <p>9 that's the only reason. I believe that's</p> <p>10 evidence of why I would have done it. That's</p> <p>11 one reason why, that he did confirm that she</p> <p>12 had input on the job spec.</p> <p>13 And I would think that it's improper for</p> <p>14 someone who knows they're about to apply for a</p> <p>15 position to put themselves in a position to</p> <p>16 determine what it would take to get the</p> <p>17 position.</p> <p>18 Q. So you're saying that's not the only thing</p> <p>19 that caused you to add her as a defendant? Is</p> <p>20 it the thing that tipped the scale in terms of</p> <p>21 whether you were going to add Marilyn Benson</p> <p>22 as a defendant?</p> <p>23 A. The other -- the reason is that she</p>
Page 91	Page 93
<p>1 of reading it. Now, if I'm wrong, they'll</p> <p>2 show that, but that's what I remember.</p> <p>3 Q. That's the only thing you can remember he</p> <p>4 said, is that she was among a group of people</p> <p>5 that had some input into putting the spec</p> <p>6 together?</p> <p>7 A. Relating to what you were asking me, yes, sir.</p> <p>8 Q. You're qualifying on me, now, and I can't</p> <p>9 quite figure out how you're qualifying it.</p> <p>10 When you say with regard to what you're asking</p> <p>11 me, what do you mean?</p> <p>12 A. You asked me can I remember anything else that</p> <p>13 Mr. Tarver said in his EEOC response. Well,</p> <p>14 that's -- if I sit here, I could probably</p> <p>15 piece together several things that he said in</p> <p>16 that response, but they're not on my mind</p> <p>17 right now.</p> <p>18 Q. So the only thing that you remember at this</p> <p>19 point in time about Marilyn that was said in</p> <p>20 Courtney's response to the EEOC was that</p> <p>21 Marilyn was one of the people who participated</p> <p>22 in the development of the job spec?</p> <p>23 A. I believe you asked me how did I know who did</p>	<p>1 participated in writing those specs for a</p> <p>2 position she was applying for. So is it the</p> <p>3 fact that Courtney said she did, in fact,</p> <p>4 participate in it? That is really the same</p> <p>5 thing. She did, and he said she did.</p> <p>6 Q. Is that the only way you knew about Marilyn</p> <p>7 Benson's participation in any aspect of the</p> <p>8 job announcement or spec was what was put in</p> <p>9 Courtney's response to the EEOC?</p> <p>10 A. Let me see if I got that. I took a breath and</p> <p>11 it all went out of my head. Would you ask me</p> <p>12 that one more time.</p> <p>13 Q. Was the only way you knew or have reason to</p> <p>14 believe that Marilyn Benson participated in</p> <p>15 the development of or creation of the spec or</p> <p>16 the announcement was what was put into</p> <p>17 Courtney's response to the EEOC to your charge?</p> <p>18 A. No, sir.</p> <p>19 Q. How else did you know?</p> <p>20 A. I believe based on the current staffing of the</p> <p>21 office that -- anything that had to be done --</p> <p>22 like, for instance, establishing the position,</p> <p>23 I believe that Marilyn did memos for Henry,</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 94	Page 96
<p>1 or she may have, I think, for Henry's</p> <p>2 signature, requesting that it be</p> <p>3 established --</p> <p>4 I'm going by the fact that she's done</p> <p>5 that generally for all other positions. I've</p> <p>6 not seen anything saying that Henry went</p> <p>7 outside of Central Personnel to get this done,</p> <p>8 and the fact that Henry doesn't use his</p> <p>9 computer or know very much about word</p> <p>10 processing, that I didn't think he typed it</p> <p>11 himself.</p> <p>12 Q. How do you know she typed anything else? You</p> <p>13 said she typed something else, like a</p> <p>14 transmission or something --</p> <p>15 A. I would say I would assume that if Henry was</p> <p>16 relying on Central Office Personnel staff and</p> <p>17 he didn't ask me or Joan, that -- really, the</p> <p>18 two that I would have thought he would have</p> <p>19 gotten to do something for him would be</p> <p>20 Marilyn or Becky. And I don't think Becky --</p> <p>21 I think I've asked Becky if she did the memo,</p> <p>22 and I believe she said that she did not, that</p> <p>23 she thought that Marilyn had.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Do you have any -- anything other than just</p> <p>3 your belief that she typed the memo?</p> <p>4 A. It's all I'll have unless they can produce who</p> <p>5 did type it, but, yes.</p> <p>6 Q. All right.</p> <p>7 A. Becky may have told me that Marilyn talked to</p> <p>8 her. I can't say for sure.</p> <p>9 Q. Any other reason you included Marilyn Benson</p> <p>10 in the lawsuit other than what Courtney put in</p> <p>11 his response and what you believed to be a</p> <p>12 memo that Marilyn typed with respect to the</p> <p>13 job?</p> <p>14 A. It's generally her participation in the</p> <p>15 development of those specs is why I would</p> <p>16 include her.</p> <p>17 Q. And how did you learn that?</p> <p>18 A. Well, I knew -- for me, it was confirmed when</p> <p>19 I saw that in the EEOC response.</p> <p>20 Q. The EEOC response?</p> <p>21 A. That Courtney typed, yes.</p> <p>22 Q. When you say it was confirmed, what do you</p> <p>23 mean?</p>
Page 95	Page 97
<p>1 Q. Which memo are you referring to?</p> <p>2 A. When you write a letter to State Personnel</p> <p>3 asking them to establish a position, what that</p> <p>4 means is State Personnel has to actually put</p> <p>5 the position in the system.</p> <p>6 Q. Right.</p> <p>7 A. You know, we manage our own Exempt Selection</p> <p>8 Procedure and decide what it is, but if they</p> <p>9 don't put it in there, we can't do anything</p> <p>10 with it.</p> <p>11 Q. You're talking about the form that was sent,</p> <p>12 right, or are you talking about something that</p> <p>13 went with the form?</p> <p>14 A. It was a memo.</p> <p>15 Q. Memo that went with the form. And it was your</p> <p>16 belief --</p> <p>17 A. I don't know what form you're referring to.</p> <p>18 Q. Wasn't there a form sent to State Personnel</p> <p>19 asking that the job of Departmental Assistant</p> <p>20 Personnel Manager be created or approved in</p> <p>21 their system?</p> <p>22 A. I believe it was a memo.</p> <p>23 Q. And you believe that Marilyn typed the memo?</p>	<p>1 A. I mean that I deduced based on the way things</p> <p>2 had always been done, based on Marilyn and</p> <p>3 Henry's relationship, that she was the one</p> <p>4 that was assisting him in getting this thing</p> <p>5 done and that I saw in the EEOC that she was</p> <p>6 listed as one of those people, I said, well, I</p> <p>7 guess I was right about that.</p> <p>8 Q. Now, you mentioned Henry's and Marilyn's</p> <p>9 relationship.</p> <p>10 A. Uh-huh. (Positive response.)</p> <p>11 Q. Yes?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Tell me what that was.</p> <p>14 A. At this time, Henry and Marilyn -- she was</p> <p>15 basically -- before this position, she had</p> <p>16 been kind of working as his assistant, you</p> <p>17 know. He went to her -- back to the things</p> <p>18 that I said. She went to meetings with him,</p> <p>19 met with the Associate Commissioner with him.</p> <p>20 And then also just basically the</p> <p>21 responsibilities of the office, you know, if</p> <p>22 he had wanted assistance in developing any</p> <p>23 class spec, it would have fallen under her job</p>

Page 98	Page 100
<p>1 duties. And I just -- it would not have been</p> <p>2 something that I wouldn't think would happen,</p> <p>3 that he would get her to write her own job</p> <p>4 spec.</p> <p>5 Q. I thought you said you didn't know what her</p> <p>6 job duties were.</p> <p>7 A. Other than -- not at that time that you asked</p> <p>8 me. You were asking me back when I said --</p> <p>9 Q. Right.</p> <p>10 A. You said did you know.</p> <p>11 Q. That's true.</p> <p>12 A. And I said no. But I do know that managing</p> <p>13 the Exempt Selection Procedure and working</p> <p>14 with wage and class are two of Marilyn's</p> <p>15 continuing duties now.</p> <p>16 MR. NIX: Do you want to take a</p> <p>17 break now for lunch?</p> <p>18 MR. MOZINGO: Sure. We can. How</p> <p>19 long do you want to take?</p> <p>20 (Off-the-record discussion.)</p> <p>21 MR. NIX: Ms. Hubbard, this</p> <p>22 deposition is being taken</p> <p>23 pursuant to the Federal Rules of</p>	<p>1 and that she otherwise, in a very general</p> <p>2 sense, received a sort of preferential</p> <p>3 treatment. And I'm not trying to put those</p> <p>4 words in your mouth. I'm simply saying that</p> <p>5 to ask you this. Before we broke, we were</p> <p>6 talking about that subject basically, and I</p> <p>7 want to make sure that there's nothing else</p> <p>8 that you recall at this time about that.</p> <p>9 In other words, is there anything else</p> <p>10 that you remember or that sticks out in your</p> <p>11 mind that comes back to you as an example of a</p> <p>12 time or whatever when you think Marilyn Benson</p> <p>13 was given preferential treatment or special</p> <p>14 treatment?</p> <p>15 MR. MOZINGO: Other than what she</p> <p>16 said?</p> <p>17 MR. NIX: Exactly, yes.</p> <p>18 A. To the best that I can recall right now, that</p> <p>19 should be about it.</p> <p>20 Q. Okay. I'd like to show you -- well, I'll tell</p> <p>21 you what. Let me do this in a little bit more</p> <p>22 chronological order. Okay?</p> <p>23 MR. NIX: I worked so hard last</p>
Page 99	Page 101
<p>1 Civil Procedure. And pursuant</p> <p>2 to those rules, you have the</p> <p>3 right to receive a copy of this</p> <p>4 deposition by way of a</p> <p>5 transcript and review that, make</p> <p>6 certain clerical corrections, or</p> <p>7 you may way waive that right.</p> <p>8 Which do you prefer to do? Do</p> <p>9 you want to get a copy of it,</p> <p>10 read it and sign it, or do you</p> <p>11 want to waive that right?</p> <p>12 THE WITNESS: I waive that right.</p> <p>13 (Lunch recess was taken.)</p> <p>14 Q. Well, I have no idea where we stopped. Do</p> <p>15 you?</p> <p>16 A. No, sir.</p> <p>17 Q. You're supposed to remember that. Maybe we'll</p> <p>18 just say goodbye to that piece, go somewhere</p> <p>19 else. How about that?</p> <p>20 Ms. Hubbard, I wrote down on a note here</p> <p>21 that you always felt that there were things</p> <p>22 that you and Ms. Owens were asked to do that</p> <p>23 Marilyn was not to do -- was not asked to do,</p>	<p>1 night, I pre-marked one</p> <p>2 document.</p> <p>3 (Defendant's Exhibit 14 was marked</p> <p>4 for identification</p> <p>5 Q. Let me show you what I'll mark as Defendant's</p> <p>6 Exhibit 14.</p> <p>7 MR. NIX: And we're putting names,</p> <p>8 aren't we? Hubbard.</p> <p>9 Q. I'll ask you to tell me what that is, please,</p> <p>10 ma'am.</p> <p>11 A. It's a charge of discrimination filed with the</p> <p>12 EEOC.</p> <p>13 Q. Is that the charge that you filed?</p> <p>14 A. Yes, sir, it appears to be.</p> <p>15 Q. What was the basis of that charge?</p> <p>16 MR. MOZINGO: Are you asking based</p> <p>17 upon what's here, what's in the</p> <p>18 notice?</p> <p>19 MR. NIX: Yeah. Yeah. I'm</p> <p>20 asking --</p> <p>21 Q. What is the charge that you stated in the</p> <p>22 notice?</p> <p>23 A. That I was discriminated against in violation</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 102	Page 104
<p>1 OF Title 7.</p> <p>2 Q. Now, is that your notice? In other words, is</p> <p>3 that a notice that you sent to them or that</p> <p>4 you filled out for the EEOC?</p> <p>5 A. It is the one that I signed. I'm not sure</p> <p>6 whether or not Linda Birdsong may have typed</p> <p>7 this up, but I did sign it.</p> <p>8 Q. Linda Birdsong may have typed it up based on</p> <p>9 what?</p> <p>10 A. Both she and Ms. -- both Ms. Owens and I had</p> <p>11 spoken with Ms. Birdsong, and I -- let me</p> <p>12 think. I think I had called her to see if I</p> <p>13 needed to bring my charge up there or what I</p> <p>14 needed to do, and she said, is it basically</p> <p>15 the same as Ms. Owens'? And I said, yes. And</p> <p>16 she said, I'll type it up. I believe that's</p> <p>17 what happened.</p> <p>18 Q. You don't think you submitted anything in</p> <p>19 writing before that; is that right?</p> <p>20 A. I don't think so.</p> <p>21 Q. Okay.</p> <p>22 A. Let me think a second. I may have sent</p> <p>23 something in memo form and then was told that</p>	<p>1 don't know if you want the exact wording, but</p> <p>2 basically it's saying that they didn't find a</p> <p>3 cause, but that we could obtain a lawyer and</p> <p>4 sue if we wanted to.</p> <p>5 Q. All right.</p> <p>6 A. I believe that's what it is. I'm summarizing</p> <p>7 from memory more than I'm reading it.</p> <p>8 Q. What's the title of the document?</p> <p>9 A. Dismissal and Notice of Rights.</p> <p>10 Q. All right. Going back to your charge, the one</p> <p>11 you signed, it's dated 3-11-06, the charge</p> <p>12 says: On September 15, 2005, I was denied the</p> <p>13 opportunity to apply for the promotional</p> <p>14 position of Departmental Assistant Personnel</p> <p>15 Manager.</p> <p>16 Can you explain that to me, how you were</p> <p>17 denied the opportunity to apply for that</p> <p>18 position?</p> <p>19 A. Because the substitution clause had been left</p> <p>20 out which made my experience non-qualifying,</p> <p>21 so I could not have been considered for the</p> <p>22 position.</p> <p>23 Q. Could you have applied for the position?</p>
Page 103	Page 105
<p>1 it had to go on this form. I'm not 100</p> <p>2 percent sure.</p> <p>3 (Defendant's Exhibit 15 was marked</p> <p>4 for identification.)</p> <p>5 Q. Let me show you Defendant's Exhibit 15-Hubbard</p> <p>6 and ask you what that is, please.</p> <p>7 A. This is a dismissal and notice of right to sue</p> <p>8 that was issued by -- well, it was issued by</p> <p>9 Beverly Hinton for Bernice Williams-Kimbrough.</p> <p>10 Q. Now, who handled your claim? Who was the</p> <p>11 investigator with the EEOC for your claim?</p> <p>12 A. Lula Bell.</p> <p>13 Q. So both you and Ms. Owens had the same</p> <p>14 investigator?</p> <p>15 A. Yes.</p> <p>16 Q. Is Ms. Bell black or white or some other</p> <p>17 ethnic ...</p> <p>18 A. I never asked her what her race was, and I</p> <p>19 never saw her in person.</p> <p>20 Q. What does that document do that you're looking</p> <p>21 at now?</p> <p>22 A. It's stating that the EEOC has completed its</p> <p>23 investigation and that they didn't find -- I</p>	<p>1 A. There was no one holding me physically to keep</p> <p>2 me from applying, but it would have been a</p> <p>3 nonsensical thing to do because it wouldn't</p> <p>4 have served a purpose.</p> <p>5 Q. And so you did not apply for the position?</p> <p>6 A. I did not.</p> <p>7 Q. Is it your belief today or is it your</p> <p>8 contention in this lawsuit that you could have</p> <p>9 been hired for this position or that you would</p> <p>10 have been hired for this position if you had</p> <p>11 applied?</p> <p>12 A. I believe that it's possible I could have,</p> <p>13 yes.</p> <p>14 Q. In terms of your belief in that regard, to</p> <p>15 what degree of certainty can you state that</p> <p>16 you would have obtained or got the job of</p> <p>17 Departmental Assistant Personnel Manager if</p> <p>18 you applied and, I guess, if the substitution</p> <p>19 provision had been in there so you could have</p> <p>20 applied? Okay?</p> <p>21 A. The only thing that I can say is that I could</p> <p>22 have been an applicant for that position, and</p> <p>23 I could have been considered for the</p>

Page 106	Page 108
<p>1 position. The odds and such as that as to who</p> <p>2 would or would not get it would depend on what</p> <p>3 kind of applicant pool there was, a lot of</p> <p>4 variable things.</p> <p>5 So I couldn't say, oh, if I had been able</p> <p>6 to apply, I would have been picked. I'm</p> <p>7 saying that I should have been able to at</p> <p>8 least been in consideration for it.</p> <p>9 Q. Now, you heard yesterday Ms. Owens say that</p> <p>10 she knew she would have gotten the job or</p> <p>11 something to that effect. She was quite</p> <p>12 positive about it. Do you agree with that?</p> <p>13 MR. MOZINGO: Object to the form to</p> <p>14 the extent that you</p> <p>15 mischaracterized Ms. Owens'</p> <p>16 testimony, but you can answer</p> <p>17 the question.</p> <p>18 A. Do I agree that she would have gotten it a</p> <p>19 hundred -- I don't understand what I'm</p> <p>20 agreeing to.</p> <p>21 Q. All right. Let me ask it this way. My</p> <p>22 understanding from Ms. Owens' testimony was</p> <p>23 that she -- if she could have applied for the</p>	<p>1 grade now. I would have earned more money</p> <p>2 from that point there to what I'm making now,</p> <p>3 because it would have been higher money than</p> <p>4 what I'm getting in salary.</p> <p>5 In my case, if I would have been</p> <p>6 promoted, that would have immediately given me</p> <p>7 a four-step increase and then a two-step</p> <p>8 probationary, and then in these three years, I</p> <p>9 have every reason to believe I would have</p> <p>10 continued to get two-step merit increases, so</p> <p>11 the compensation of pay for that.</p> <p>12 Q. Have you figured up how much financial loss</p> <p>13 that you believe at this point you've</p> <p>14 incurred?</p> <p>15 A. Not a total financial loss. I have tried to</p> <p>16 play around with what my back pay would be.</p> <p>17 It's just hard to do it. I've just tried to</p> <p>18 get a ballpark.</p> <p>19 Q. What's your ballpark?</p> <p>20 A. Well, I've had about three ballparks,</p> <p>21 depending on how you do it. I would say</p> <p>22 between five and \$7,000 in back pay.</p> <p>23 Q. In back pay. Okay. What other financial</p>
Page 107	Page 109
<p>1 job, she thinks she would have gotten the</p> <p>2 job. Is that an accurate statement, do you</p> <p>3 think, of what you heard her say yesterday?</p> <p>4 A. Yes, I believe that's what I heard her say</p> <p>5 yesterday.</p> <p>6 Q. Do you agree with that?</p> <p>7 A. I can't say what she believed or didn't</p> <p>8 believe, but I would not say that Joan would</p> <p>9 have gotten it or that I would have gotten</p> <p>10 it. All I'm contending is that I should have</p> <p>11 been able to contend for it.</p> <p>12 Q. So would it be correct to say that you do not</p> <p>13 claim in this case any type of financial</p> <p>14 disadvantage, any financial loss as a result</p> <p>15 of what you say was discrimination in not</p> <p>16 being allowed to apply?</p> <p>17 A. No, sir, I do claim financial damages.</p> <p>18 Q. You do claim that. Okay. Tell me what those</p> <p>19 are, please.</p> <p>20 A. If I had -- had applied for the position and</p> <p>21 received it, I would have gotten a higher</p> <p>22 salary, so back pay and the position and</p> <p>23 future pay -- I would be put at a higher pay</p>	<p>1 damages would you contend you would ...</p> <p>2 A. I'm asking for damages that would make me</p> <p>3 whole at this point in that I'm asking that I</p> <p>4 be given the opportunity to make the same</p> <p>5 money that Marilyn makes since I was not given</p> <p>6 an opportunity to apply for it. And I'm not</p> <p>7 sure how much -- what the rest of that</p> <p>8 question was.</p> <p>9 Q. I'm just asking you all of the different</p> <p>10 elements of your financial disadvantage or</p> <p>11 loss claim is.</p> <p>12 A. I also would like compensation for mental</p> <p>13 anguish, embarrassment, humiliation. I do</p> <p>14 remember that from yesterday. This was a very</p> <p>15 life-changing event for me.</p> <p>16 Q. How so?</p> <p>17 A. The whole time that I was saying that I had</p> <p>18 thought they were giving Marilyn preferential</p> <p>19 treatment, I assumed that it was to put her in</p> <p>20 Mr. Ervin's position when he left and was</p> <p>21 trying to, you know, prepare myself for that.</p> <p>22 But instead, what they did was go above and</p> <p>23 beyond that and give her a stepping stone into</p>

Page 110	Page 112
<p>1 his position.</p> <p>2 I feel like that I have worked very hard</p> <p>3 for the Department of Mental Health, and</p> <p>4 specifically for Mr. Ervin. I felt there were</p> <p>5 many projects that he as the Director was</p> <p>6 asked to take on that he, in turn, came to me</p> <p>7 and asked me to assist him with. And having</p> <p>8 served as the -- a personnel director, it was</p> <p>9 just a slap in the face to say, after having</p> <p>10 done all that, I could not assist him in an</p> <p>11 official capacity and draw a salary for it</p> <p>12 when in my mind, that's what I've been doing</p> <p>13 all along.</p> <p>14 Q. Let me make sure I understand a couple of</p> <p>15 things, okay, about that. You said that you</p> <p>16 assumed before the job was announced or</p> <p>17 awarded to Marilyn that she was being groomed</p> <p>18 to take Mr. Ervin's position; is that right?</p> <p>19 A. (Witness nods head up and down.)</p> <p>20 Q. Is that yes?</p> <p>21 A. Yes, sir.</p> <p>22 Q. That's fine.</p> <p>23 How long had you assumed that before --</p>	<p>1 she's been given could have been assigned to</p> <p>2 the three of us as Personnel Specialists.</p> <p>3 Q. What else?</p> <p>4 A. What was the question again?</p> <p>5 Q. What other reasons do you have for believing</p> <p>6 that this job, Departmental Assistant</p> <p>7 Personnel Manager, was created for Ms. Benson</p> <p>8 specifically for the purpose of it being a</p> <p>9 stepping stone into Mr. Ervin's position when</p> <p>10 he retires or otherwise leaves?</p> <p>11 A. Other than the timing of it, basically that's</p> <p>12 it. You have to look at what they wanted the</p> <p>13 position to do and why they determined that</p> <p>14 they would make it a higher pay grade when</p> <p>15 they could have just said here's the duties</p> <p>16 that we need done; now, Marilyn will be</p> <p>17 responsible for this, Lynn will be responsible</p> <p>18 for this, Joan will be responsible for this.</p> <p>19 I don't understand why it had to be this</p> <p>20 big "assistant position" and, if so, why they</p> <p>21 had to eliminate the substitution clause,</p> <p>22 which the only thing that served was to keep</p> <p>23 Joan and I from applying.</p>
Page 111	Page 113
<p>1 before you found out there was a position that</p> <p>2 would be offered, that telephone call from</p> <p>3 Ms. Leak, how long had you assumed that?</p> <p>4 A. That would be back to what I was previously</p> <p>5 telling you, prior to getting the phone call,</p> <p>6 you know, the office and all that ...</p> <p>7 I had been working at Greil for probably</p> <p>8 two years or more, during that time frame,</p> <p>9 that I began to see that they were</p> <p>10 establishing the position -- not establishing</p> <p>11 the position, but positioning Ms. Benson.</p> <p>12 Q. Okay. And then you say -- the next thing you</p> <p>13 said was, then they went a step further and</p> <p>14 actually created a, what?</p> <p>15 A. Position for her that would be a stepping</p> <p>16 stone to that position.</p> <p>17 Q. What makes you think that this job that</p> <p>18 Ms. Benson has is a stepping stone to</p> <p>19 Mr. Ervin's job?</p> <p>20 A. Because I really can't come up with any other</p> <p>21 reason for the establishment of it. I don't</p> <p>22 know why there had to be a special position</p> <p>23 created when, really, the assignments that</p>	<p>1 They could have had the substitution</p> <p>2 clause in there and still hired somebody with</p> <p>3 a degree. Having a substitution clause does</p> <p>4 not keep people with degrees from applying for</p> <p>5 a position, nor does it keep people from</p> <p>6 selecting people with degrees for a position.</p> <p>7 So I felt like that was a step up for</p> <p>8 her, getting ready for Mr. Ervin's job.</p> <p>9 Q. What you're saying is you think the only</p> <p>10 reason possible for taking out the</p> <p>11 substitution clause in this job spec was so</p> <p>12 you and Ms. Owens could not apply?</p> <p>13 A. That's correct.</p> <p>14 Q. You can't think of any other reason?</p> <p>15 MR. MOZINGO: Any other reason for?</p> <p>16 I'm sorry.</p> <p>17 Q. You can't think of any other reason for the</p> <p>18 fact that the substitution provision was not</p> <p>19 in the job spec?</p> <p>20 A. No, sir.</p> <p>21 Q. Now, Ms. Hubbard, I know that you do work on a</p> <p>22 high level as a Personnel Specialist III, but</p> <p>23 do you work on a -- the same level, for</p>

Page 114	Page 116
<p>1 example, as the Commissioner or the Associate 2 Commissioner for Administration Personnel or 3 the Director of the Personnel Department? 4 A. I do not work at the level of the Commissioner 5 or the Associate Commissioner, although we may 6 have similar tasks at a less complex level. 7 There are certain aspects of Mr. Ervin's job 8 as a Director that I have done in my capacity 9 as a Personnel Specialist III. 10 Q. Are there any differences between what you do 11 now and what Mr. Ervin does? 12 A. Let me take a moment to see if I know ... 13 Other than attending meetings -- yes. 14 I'm not privy to making certain responsible 15 decisions that Mr. Ervin makes. 16 Q. Like what? 17 A. Well, he should be making decisions as far as 18 what our budget is, what it will be spent for, 19 where we will be recruiting people, what the 20 structure of the office will be, you know, 21 what are the classifications of the offices 22 that will work here, are there changes 23 needed -- even like with this wage and class,</p>	<p>1 assigned -- there were certain classifications 2 that people didn't do job analysis 3 questionnaires for and, as such, Segal did not 4 write specs for. 5 Q. Right. 6 A. And rather than have Segal send back and ask 7 Segal to write those specs, Ms. Benson 8 assigned those to Brooke Hogan, Joan Owens, 9 and me, and she, herself, has written some of 10 them. 11 Q. What types of jobs are those? 12 A. I don't know what you mean by -- 13 Q. First, let's do this. Are these higher-level 14 jobs that we're talking about that you're 15 writing specs for, or are they lower-level 16 jobs? 17 A. Higher level. 18 Q. Do some of those higher-level job specs leave 19 out the substitution clause? 20 A. Some of them may. I can't say. 21 Q. How about of the ones that you're writing? 22 A. The one that comes to mind is the 23 Administrator -- it's a VI or a VII, and it's</p>
Page 115	Page 117
<p>1 should there be a study done; if so, are we 2 taking it verbatim by what they recommend? 3 Those are things that he's in a position 4 of authority to make a decision about. 5 Q. And you're not in that loop, right? 6 A. I do not have the authority to make those 7 decisions. 8 Q. Do you have the authority to make input into 9 those decisions? 10 A. In the past, yes, I was frequently called on 11 to make input into such decisions. 12 Q. Are you currently working on the final report 13 with Segal with regard to the wage and class 14 study? 15 A. No, sir. 16 Q. Are you currently working on the development 17 of new specifications -- 18 A. Yes, sir. 19 Q. -- for jobs? 20 A. Yes, sir. 21 Q. How does that work? Tell me exactly what the 22 mechanics of that is. 23 A. Well, in these particular cases, Ms. Benson</p>	<p>1 the position that Anne Evans currently holds 2 with the Department, and it currently does 3 call for substitution. 4 Q. The way it's been drafted; is that what you're 5 saying? 6 A. Yes. 7 Q. Is that one of the positions that Segal did 8 not make a recommendation on? 9 A. They made certain recommendations on certain 10 administrator -- and maybe Administrator VI or 11 VII positions, but not that specific position. 12 Q. Do you know whether in their recommendations 13 for, let's say, an Administrator VI position, 14 they left in the substitution clause? 15 A. I don't know about six, but I know there were 16 some administrator positions that did still 17 have it. 18 Q. How about Personnel Specialist positions? 19 A. I believe that the Personnel Specialist still 20 allows for substitution. 21 Q. Do you know whether or not the Segal 22 specification or the Segal qualification -- 23 the qualification portion of the Segal final</p>



Page 118	Page 120
<p>1 report that relates to the Departmental</p> <p>2 Assistant Personnel Manager has the</p> <p>3 substitution clause contained within it?</p> <p>4 A. I don't believe it does. They collapsed</p> <p>5 certain of the positions, and so I think that</p> <p>6 now if you're a manager, you cannot</p> <p>7 substitute, but a specialist can substitute.</p> <p>8 Q. I'm not sure I know what you mean by</p> <p>9 collapsed.</p> <p>10 A. This happened in a lot of positions, that they</p> <p>11 might have had a one, two, and a three, and</p> <p>12 they joined the two and the three. That's</p> <p>13 what they did for Personnel Specialist. They</p> <p>14 said that instead of having a Personnel</p> <p>15 Specialist II and a Personnel Specialist III,</p> <p>16 they would just have ...</p> <p>17 Q. Two and three?</p> <p>18 A. I think they were calling it something</p> <p>19 different, but I don't remember.</p> <p>20 Q. But there's substitution on Personnel</p> <p>21 Specialist, right?</p> <p>22 A. That's correct.</p> <p>23 Q. But there's not on Personnel Manager, right?</p>	<p>1 titles.</p> <p>2 Q. There's one here that they call a Human</p> <p>3 Resources Assistant Director that -- where the</p> <p>4 current title says Departmental Assistant</p> <p>5 Personnel Manager, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And this particular job classification does</p> <p>8 not allow for substitution in the Segal</p> <p>9 qualification section, is that right, in that</p> <p>10 exhibit?</p> <p>11 A. That's correct.</p> <p>12 Q. In the Human Resources family as set forth by</p> <p>13 Segal, you would be a Human Resources</p> <p>14 Specialist; is that right?</p> <p>15 A. That's right.</p> <p>16 Q. And substitution is allowed, is that right,</p> <p>17 for that?</p> <p>18 A. Yes, and they decreased the degree</p> <p>19 requirement. It used to require a bachelor's</p> <p>20 for my position, and they dropped it to an</p> <p>21 associate's.</p> <p>22 Q. There's another category called Human</p> <p>23 Resources Manager. Does that -- I guess it</p>
Page 119	Page 121
<p>1 A. That's correct.</p> <p>2 Q. And Personnel Manager in the Human Resources</p> <p>3 family of jobs is listed below the</p> <p>4 Departmental Assistant Personnel Manager,</p> <p>5 right?</p> <p>6 A. The Segal specs, the best that I know, did not</p> <p>7 allow substitution for the Assistant Personnel</p> <p>8 Manager or any of the personnel managers.</p> <p>9 Q. I'm looking at Defendant's Exhibit 4 to</p> <p>10 Ms. Owens' deposition. She and I talked about</p> <p>11 it very briefly yesterday. Turning to the</p> <p>12 family of Human Resources ...</p> <p>13 A. What are you asking me?</p> <p>14 Q. What are the jobs listed in that family?</p> <p>15 A. Human Resource Technician, a Human Resource</p> <p>16 Specialist, a Human Resource Manager, a Human</p> <p>17 Resources Assistant Director, and a Human</p> <p>18 Resources Director. That's proposed titles.</p> <p>19 Q. And they correlate those to the actual titles</p> <p>20 that currently exist, don't they?</p> <p>21 A. Yes, that -- they collapsed the Personnel</p> <p>22 Specialist I and II, they collapsed Personnel</p> <p>23 Manager I, II, and III, and then gave them new</p>	<p>1 would be in the hierarchy right above Human</p> <p>2 Resources Specialist, but tell me. Does Human</p> <p>3 Resources Manager have a substitution</p> <p>4 provision?</p> <p>5 A. It does not.</p> <p>6 Q. Okay. So the writing of the specification for</p> <p>7 these jobs that we're looking at right now in</p> <p>8 the Human Resources family, if the Segal</p> <p>9 recommendation is followed would mean that</p> <p>10 with regard to the Human Resources Specialist</p> <p>11 and the Human Resources Technician, that a</p> <p>12 substitution clause would be included in those</p> <p>13 specs and announcements; is that right?</p> <p>14 A. For the Human Resource Specialist?</p> <p>15 Q. For the Human Resource Technician and</p> <p>16 Specialist.</p> <p>17 A. I didn't look at the Technician.</p> <p>18 Yes. I'm sorry. I was kind of hung up</p> <p>19 on the wording of that substitution clause.</p> <p>20 It does allow for substitution.</p> <p>21 Q. So there are two job categories in the Human</p> <p>22 Resources family under the Segal study that</p> <p>23 allow for substitution, and that would be the</p>

Page 122	Page 124
<p>1 Human Resources Technician and the Human</p> <p>2 Resources Specialist, right?</p> <p>3 A. That's correct.</p> <p>4 Q. And the Human Resources Manager would not</p> <p>5 allow for substitution; is that right?</p> <p>6 A. According to Segal, that's correct.</p> <p>7 Q. And the Human Resources Assistant Director</p> <p>8 which corresponds with the Departmental</p> <p>9 Assistant Personnel Manager would not allow</p> <p>10 for substitution either, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And, of course, neither would the Personnel</p> <p>13 Manager IV or Human Resources Director? That</p> <p>14 would not allow for substitution?</p> <p>15 A. That's correct.</p> <p>16 Q. Now, do you know when the last wage and class</p> <p>17 study was done before this Segal wage and</p> <p>18 class study?</p> <p>19 A. I don't know specifically. I know it was a</p> <p>20 long time ago.</p> <p>21 Q. So you're not privy to -- and you do not</p> <p>22 participate in making high-level management</p> <p>23 types of decisions or policy, would that be</p>	<p>1 direction of the Human Resources Department in</p> <p>2 the Central Office or other departments in the</p> <p>3 Central Office, correct?</p> <p>4 A. Not anymore, no.</p> <p>5 Q. When you say not anymore, what do you mean?</p> <p>6 A. We used to have a very open communication with</p> <p>7 Mr. Ervin that if he knew he was going to a</p> <p>8 meeting and certain things would be discussed,</p> <p>9 he would call in Marilyn, Joan, and myself,</p> <p>10 and we would discuss aspects of it. He would</p> <p>11 ask what we thought about it. And my</p> <p>12 assumption is he made recommendations based on</p> <p>13 what we provided him to that committee or</p> <p>14 committees.</p> <p>15 Q. You don't do that now?</p> <p>16 A. No, sir.</p> <p>17 Q. When did that stop?</p> <p>18 A. I would say after the position became public</p> <p>19 and I had been questioning Mr. Ervin as to why</p> <p>20 things were done the way that they were and</p> <p>21 then the subsequent filing of my EEOC.</p> <p>22 Q. Okay. So tell me this. When the position</p> <p>23 became public --</p>
Page 123	Page 125
<p>1 true, in your job?</p> <p>2 A. It's not true that I don't participate in.</p> <p>3 Q. Tell me how you do participate.</p> <p>4 A. For instance, Henry had given me the</p> <p>5 responsibility at some point of reviewing all</p> <p>6 Personnel policies when they come up. All</p> <p>7 policies are reviewed every two years, and he</p> <p>8 would ask me to read the policies and make</p> <p>9 recommendations that would go before the</p> <p>10 policy committee, whether any changes needed</p> <p>11 to be made.</p> <p>12 Q. Is it your view that your doing that is the</p> <p>13 creation of policy?</p> <p>14 A. No, but I have been -- when I worked at Greil,</p> <p>15 I was required to create policy, to write</p> <p>16 policy.</p> <p>17 Q. I'm talking about now, though.</p> <p>18 A. Right now, no, I'm not.</p> <p>19 Q. The current job -- your current job, you're</p> <p>20 not required to make policy, are you?</p> <p>21 A. No.</p> <p>22 Q. You're not necessarily in on the planning that</p> <p>23 goes on behind the scenes in terms of the</p>	<p>1 A. Yes.</p> <p>2 Q. -- you did talk to Mr. Ervin about why the</p> <p>3 substitution provision was not in the spec?</p> <p>4 A. I did.</p> <p>5 Q. When was that? When did you do that?</p> <p>6 A. It would have been soon after the announcement</p> <p>7 came out. It was the next Personnel --</p> <p>8 Central Office Personnel meeting -- staff</p> <p>9 meeting that we had after the announcement had</p> <p>10 come out.</p> <p>11 Q. Tell me about that conversation.</p> <p>12 A. I just asked Mr. Ervin why they did not</p> <p>13 include the substitution clause in it since</p> <p>14 all the other Personnel jobs did still allow</p> <p>15 for substitution. And he said that they were</p> <p>16 looking at taking it out of all the upper</p> <p>17 level administrative positions.</p> <p>18 And I said, well, are you telling me,</p> <p>19 Henry, that you feel that you were not</p> <p>20 qualified to hold your job? And he said, no.</p> <p>21 And I said, well, in essence, you're saying</p> <p>22 that, because you had to utilize the</p> <p>23 substitution clause to get this job as a Human</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 126	Page 128
<p>1 Resource Director. And so for you to say that</p> <p>2 someone with your qualifications and</p> <p>3 experience should not be allowed to apply,</p> <p>4 that you were never qualified to hold the job</p> <p>5 you were in. And he said, I'm not saying</p> <p>6 that.</p> <p>7 Q. Did you have to have substitution to become a</p> <p>8 Personnel Specialist III?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have to become a Personnel Specialist</p> <p>11 III before you got into the Department of</p> <p>12 Human Resources --</p> <p>13 A. No, sir.</p> <p>14 Q. -- there at Central Office?</p> <p>15 A. I'm sorry? Let me make sure I understand.</p> <p>16 Q. Did you have to be a Personnel Specialist III</p> <p>17 before you could go to the Central Office?</p> <p>18 A. No, sir. I was in the Central Office when I</p> <p>19 became a Personnel Specialist III.</p> <p>20 Q. Did your job change when you became a</p> <p>21 Personnel Specialist III from whatever job you</p> <p>22 previously had?</p> <p>23 A. Yes.</p>	<p>1 A. It's not really jumping in that you don't have</p> <p>2 to be in one to go to another. That would be</p> <p>3 a promotional type, like a merit system job</p> <p>4 does. But, no, I did not have to go to a one</p> <p>5 and a two in order to become a three.</p> <p>6 Q. Do you know how you got the job as a Personnel</p> <p>7 Specialist III?</p> <p>8 A. I applied for it.</p> <p>9 Q. Do you know who made the consideration and who</p> <p>10 advocated on your behalf that you receive that</p> <p>11 job?</p> <p>12 A. I don't know that anybody advocated on my</p> <p>13 behalf to receive that job.</p> <p>14 Q. You don't know that Mr. Ervin called around</p> <p>15 and advocated on your behalf to get that job?</p> <p>16 A. No, I do not believe that happened.</p> <p>17 Q. All right.</p> <p>18 A. Mr. Ervin had someone else in line for that</p> <p>19 position.</p> <p>20 Q. In discussing with Mr. Ervin at this staff</p> <p>21 meeting the fact that the substitution clause</p> <p>22 was not in the job --</p> <p>23 Is that right?</p>
Page 127	Page 129
<p>1 Q. Didn't you have to jump a good bit to get to a</p> <p>2 three, Personnel Specialist III, from where</p> <p>3 you were?</p> <p>4 MR. MOZINGO: Object to the form.</p> <p>5 Q. Do you know what I'm talking about, jump --</p> <p>6 jump jobs, jump classes, Personnel I, II, and</p> <p>7 III. You were not a Personnel I, right?</p> <p>8 A. That's correct.</p> <p>9 Q. You were not a Personnel II, right?</p> <p>10 A. That's correct.</p> <p>11 Q. You went to the Personnel III --</p> <p>12 A. That's correct.</p> <p>13 Q. -- from some position that was not even a</p> <p>14 Personnel Specialist I, right?</p> <p>15 A. That's correct.</p> <p>16 Q. What were you in?</p> <p>17 A. Administrative Support Assistant III.</p> <p>18 Q. So you went from an Administrative Support</p> <p>19 Assistant III all the way to Personnel</p> <p>20 Specialist III, right?</p> <p>21 A. Correct.</p> <p>22 Q. And you jumped some positions in doing that,</p> <p>23 didn't you?</p>	<p>1 A. Yes.</p> <p>2 Q. -- that was a staff meeting after you found</p> <p>3 out about the job from Ms. Leak?</p> <p>4 A. No. That was after the announcement came out.</p> <p>5 Q. All right. Did you say anything to him after</p> <p>6 the telephone call to Ms. Leak at the next</p> <p>7 staff meeting?</p> <p>8 A. I did not.</p> <p>9 Q. I'm glad we clarified that, because I was</p> <p>10 confused. What you're saying is, is there was</p> <p>11 a staff meeting after the announcement came</p> <p>12 out.</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And that's when you had this</p> <p>15 conversation about looking at taking, let's</p> <p>16 see -- where you asked him -- or you saying</p> <p>17 that you are not qualified because you had to</p> <p>18 have substitution?</p> <p>19 A. Correct.</p> <p>20 Q. Was there any other part of that conversation,</p> <p>21 anything other than what we've talked about?</p> <p>22 A. Before he said that they were going to take it</p> <p>23 out of all the positions, I did say, so you're</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 130	Page 132
<p>1 saying that I qualify for your job because I</p> <p>2 can qualify with substitution, but that I</p> <p>3 could not apply and qualify for your assistant</p> <p>4 position? And he said, no, they're going to</p> <p>5 take it out of my position when I leave.</p> <p>6 I think that's when I said, and so you're</p> <p>7 saying, Henry, that you never should have been</p> <p>8 in your job, you were not qualified to do your</p> <p>9 job? And he said, no, that they were looking</p> <p>10 at taking it out of all the upper-level</p> <p>11 positions.</p> <p>12 (Defendant's Exhibit 16 was marked</p> <p>13 for identification.)</p> <p>14 Q. Let me show you what I've marked as</p> <p>15 Defendant's Exhibit 16 Hubbard and ask you</p> <p>16 what that is.</p> <p>17 A. I mean, I know what it is. If you're going to</p> <p>18 ask me questions, I was going to read it all.</p> <p>19 This is the DMH/MR Internet Use Policy</p> <p>20 Acceptance of Personal Responsibility.</p> <p>21 Q. Defendant's Exhibit 16 basically says: All</p> <p>22 network activity conducted with State</p> <p>23 resources is the property of the State of</p>	<p>1 MR. MOZINGO: I'm just trying to</p> <p>2 help keep --</p> <p>3 MR. NIX: It will work out. I mean,</p> <p>4 if I ask her a question that's</p> <p>5 kind of a terminal question on a</p> <p>6 point, I'll get her to say that.</p> <p>7 MR. MOZINGO: That just helps me</p> <p>8 out. I go crazy reading uh-huh</p> <p>9 and huh-uh.</p> <p>10 MR. NIX: That's fine.</p> <p>11 MR. MOZINGO: That's for my benefit</p> <p>12 as well as yours.</p> <p>13 MR. NIX: That's fine.</p> <p>14 Q. The complaint on that Title 7 count states</p> <p>15 that the employer, including the individuals</p> <p>16 that you've sued, intentionally discriminated</p> <p>17 with malice against you because of your race.</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe that to be true?</p> <p>20 A. Yes.</p> <p>21 Q. Tell me every reason why you believe that to</p> <p>22 be true.</p> <p>23 A. Much of it is what we've already covered in</p>
Page 131	Page 133
<p>1 Alabama, correct?</p> <p>2 A. Correct.</p> <p>3 Q. That the State reserves the right to monitor</p> <p>4 and log network activity, including e-mail,</p> <p>5 with or without notice, correct?</p> <p>6 A. Correct.</p> <p>7 Q. That there is no right of personal privacy</p> <p>8 that attaches to the use of these resources.</p> <p>9 A. Correct.</p> <p>10 Q. And when you signed that in March 2000, you</p> <p>11 understood that?</p> <p>12 A. That's true.</p> <p>13 Q. And while you were using the State's computer</p> <p>14 system to record material regarding this case,</p> <p>15 working on material in this case, you</p> <p>16 understood that, didn't you?</p> <p>17 A. I did.</p> <p>18 Q. Now, you filed, among other things, a Title 7</p> <p>19 claim in this lawsuit. Okay?</p> <p>20 A. Uh-huh. (Positive response.)</p> <p>21 MR. MOZINGO: Say yes or no.</p> <p>22 Q. And you in that claim --</p> <p>23 A. Yes.</p>	<p>1 that Ms. Benson was selected, being positioned</p> <p>2 for the job. And the only purpose that I can</p> <p>3 see taking that substitution clause out was to</p> <p>4 prevent me from applying for it. Because if</p> <p>5 she was the ace person for the job and I was</p> <p>6 allowed to apply -- may or may not have</p> <p>7 interviewed. If I did interview, nothing --</p> <p>8 Allowing me to apply for it did not in</p> <p>9 any way prohibit them from valuing the degree</p> <p>10 or whatever it is that they're now saying was</p> <p>11 their motive.</p> <p>12 Q. The complaint says that this intentional</p> <p>13 discrimination was done with malice. What do</p> <p>14 you mean when you say with malice?</p> <p>15 A. With intent to intentionally discriminate</p> <p>16 against me, with a total disregard for my</p> <p>17 contribution to my job and to the Department</p> <p>18 of Mental Health, to make that decision solely</p> <p>19 based on the applicant because I believe they</p> <p>20 are desiring to maintain a black Personnel</p> <p>21 Director.</p> <p>22 Q. Why do you believe that?</p> <p>23 A. Basically everything that I've already</p>

Page 134

1 testified to this morning. I mean, why -- as  
 2 I said, they say that they did this to value a  
 3 degree. My first thing to that is, I don't  
 4 know why a Human Resource function is to make  
 5 somebody feel good about their degree. If  
 6 they're saying they just wanted to hire people  
 7 with degrees, you can hire people with degrees  
 8 and still have a substitution clause in there.  
 9 Q. Anything else?  
 10 A. I'm not sure I remember what you asked me. By  
 11 the time I get through talking, I've forgotten  
 12 the question.  
 13 Q. This same paragraph states the damages claim,  
 14 mental pain and anguish. Explain that to me.  
 15 What have you experienced in this mental pain  
 16 and anguish?  
 17 A. It takes a great deal for me to go to a job  
 18 that I used to enjoy. I spend most of my  
 19 workday guarded, wondering what shoe is going  
 20 to drop next, is there going to be conflict  
 21 every day, a great deal of frustration over  
 22 being made supervisor to someone and yet Henry  
 23 and Marilyn don't come to me with something

Page 135

1 for them. They go to them.  
 2 So it's like I'm outside the Personnel  
 3 office. Even though I've been given the  
 4 responsibility for those positions, I'm left  
 5 out of the loop with everything regarding  
 6 Personnel.  
 7 It was just very hurtful to see what they  
 8 were willing to say about me in order to  
 9 accomplish what they wanted done. That was  
 10 very hurtful.  
 11 Q. What they were willing to say about you?  
 12 A. Uh-huh. (Positive response.)  
 13 Q. What did they say?  
 14 A. That I'm not qualified to do that job. And by  
 15 that, I mean Ms. Benson's job.  
 16 Q. I know they didn't come right out and say that  
 17 to you, correct?  
 18 A. In saying that you have to have a degree to do  
 19 that job, yes, that's what they're saying.  
 20 Q. That's what I meant, is that that's what you  
 21 interpret from that -- from the non-use of the  
 22 substitution clause in the job spec is that  
 23 they think you're not adequate to do that job;

Page 136

1 is that what you're saying?  
 2 A. Yes. Why would you want to disqualify someone  
 3 who can do the job?  
 4 Q. You know --  
 5 A. I'm sorry. I'm not supposed to ask you a  
 6 question.  
 7 Q. Well, I mean, your question is, why would you  
 8 want to disqualify somebody that can do the  
 9 job, and that question assumes that they were  
 10 trying to disqualify somebody instead of raise  
 11 the level of people who apply, the level of  
 12 the quality of the people that apply.  
 13 A. How did taking the substitution -- I'm sorry.  
 14 I do not see how taking the substitution  
 15 clause out accomplished that. I can't see  
 16 that someone with a bachelor's degree would  
 17 see an open announcement and say, oh, I'm not  
 18 applying for that because people with just  
 19 experience can apply for it.  
 20 Q. Well, if you assume that there had been a  
 21 determination that it was better for a higher-  
 22 level person of the type that would be filling  
 23 a job of this kind -- it had been determined

Page 137

1 that that person would do better if they had a  
 2 college degree, why interview people that  
 3 don't have a college degree?  
 4 A. How was it determined that they would do  
 5 better?  
 6 Q. Well, what difference does that make? It's  
 7 not your job to make that determination, is  
 8 it?  
 9 A. I don't have the authority to determine what  
 10 they put on a job spec.  
 11 Q. You're not the Commissioner of Mental Health,  
 12 are you?  
 13 A. No, sir. The Commissioner of Mental Health is  
 14 not a Human Resource person, either.  
 15 Q. The Commissioner of Mental Health has  
 16 authority, doesn't the Commissioner, over the  
 17 whole Department, including the officials and  
 18 the employees of the Department?  
 19 A. He has authority, but he will also have to  
 20 take and pays repercussions if he's acted  
 21 capriciously and without cause. The fact they  
 22 violated so many of the procedures that the  
 23 Commissioner himself put in place, I think he

Deposition of Lynn Hubbard

June 3, 2008

Page 138

1 has to answer for that.

2 Q. You think they violated those -- let me ask

3 you this. Yesterday, we also had a

4 conversation -- Ms. Owens and I did -- about

5 whether the Commissioner had the legal

6 authority to develop a specification of this

7 type in the manner that he wanted to develop

8 it and then to fill it in that manner. Do you

9 agree with that?

10 A. I honestly would have to say that I don't know

11 what his legal authority is as far as writing

12 a spec for a job, because I know that the

13 merit system has procedures in place that are

14 to be followed. And I don't know whose given

15 blanket authority just to say I'm giving Joe

16 Blow this job and it's going to require this.

17 You know, I don't really know.

18 Q. Are you a merit employee?

19 A. No, sir, I'm non-merit, exempt employee.

20 Q. You're an exempt employee. What does exempt

21 employee mean?

22 A. It can mean different things. In this case,

23 what I'm saying is, I'm not a participant in

Page 139

1 the State merit system in that it is a

2 non-merit position.

3 Q. Do you know anything about the authority of

4 the Department itself and the Commissioner to

5 operate its own employment system separate and

6 apart from the merit system?

7 A. I do know that that's what we do, yes.

8 Q. But do you know anything about the statutory

9 scheme that determines that?

10 A. I'm not completely familiar with it, no.

11 Q. Do you disagree with me that the Commissioner

12 has the authority to write the spec if he

13 wants to in a manner that he believes is in

14 the best interest of the Department,

15 irrespective of whether anyone signs off on it

16 or not, irrespective of if the Job Evaluation

17 Committee looks at it, that he has that

18 authority to do that, to have the spec

19 announced and to have the job filled?

20 A. I don't know what authority he has to write a

21 job spec. I do know that he doesn't have the

22 authority to capriciously enforce procedures.

23 The Job Evaluation Committee was a -- that I

Page 140

1 know serves for the Commissioner to do these

2 jobs.

3 And, in fact, during this time period, he

4 increased the duty of the Job Evaluation

5 Committee in that he wanted the Job Evaluation

6 Committee to approve every position being

7 filled, new or not new, which had not been

8 done.

9 So on one hand, he's saying -- he's

10 relying on them to assist him in making an

11 informed decision; and on the other, he's

12 saying, I'm just going to go out and do what I

13 want to do when I want to do it.

14 Q. He has the right to increase the authority of

15 the JEC, to decrease the authority of the JEC

16 to make decisions about substitution or not;

17 isn't that right? He has the authority under

18 the law to direct the Department and the

19 Associate Commissioner at his discretion;

20 isn't that right?

21 A. I will just say I don't know enough about the

22 law and the legal aspect of it to answer that

23 question.

Page 141

1 Q. I guess that's -- I mean, it makes me just

2 kind of curious about why you believe you have

3 a cause of action here if you don't know what

4 the Commissioner has authority to do and

5 doesn't do and cannot do.

6 A. Well, I know that when I met with the

7 Commissioner prior to this position being

8 announced, I met with him and discussed that I

9 thought such a position was coming out, that I

10 was concerned that they were writing this

11 specifically for Ms. Benson, and that they

12 were bypassing my rights and that it was being

13 done on a racial basis. He did not say, no,

14 Lynn, that's not the case; here is what's

15 going on.

16 Q. When did you talk to him?

17 A. It was in either late April or early May of

18 2005.

19 Q. What caused you to talk to him at that time?

20 A. I had first heard that there was a position

21 being created, and then I was informed that

22 they were changing the substitution clause.

23 Those two things together prompted me to go



Page 142	Page 144
<p>1 and speak to the Commissioner.</p> <p>2 Q. How did you first learn they were changing the</p> <p>3 substitution clause?</p> <p>4 A. Ms. Benson told me.</p> <p>5 Q. What did she tell you?</p> <p>6 A. I can't remember what led up to it. I just</p> <p>7 remember she said that -- I don't know if she</p> <p>8 was saying what the Job Evaluation Committee</p> <p>9 was going to do or -- I don't know how she</p> <p>10 said it, but that we're changing the</p> <p>11 substitution from one-for-one to two-for-one.</p> <p>12 Q. When did you first find out that this job</p> <p>13 would not include the substitution provision</p> <p>14 at all?</p> <p>15 A. When the announcement came out.</p> <p>16 Q. What did the Commissioner say to you when you</p> <p>17 went to him and complained to him?</p> <p>18 A. He didn't really say anything other than he</p> <p>19 did tell me that he would not sign off on that</p> <p>20 substitution clause, because I had said that I</p> <p>21 wanted someone to really evaluate that to</p> <p>22 determine if that was a legitimate course of</p> <p>23 action to take.</p>	<p>1 Q. And you were going on vacation in May?</p> <p>2 A. Uh-huh. (Positive response.)</p> <p>3 Q. Yes?</p> <p>4 A. Yes, sir.</p> <p>5 Q. What weeks of May?</p> <p>6 A. I don't remember specifically. It wasn't -- I</p> <p>7 think it was the third week of May. I think</p> <p>8 it was the week before we get that</p> <p>9 back-to-back holidays, I think.</p> <p>10 Q. Do you know whether the substitution clause</p> <p>11 was changed?</p> <p>12 A. Yes. After I had been back from vacation, an</p> <p>13 exempt -- I never can remember what those</p> <p>14 things are called, those number memos that we</p> <p>15 talked about, exempt classification plan</p> <p>16 change came out and announced that it was</p> <p>17 changed.</p> <p>18 And I called the Commissioner -- well, I</p> <p>19 called and got his secretary and I asked her</p> <p>20 if he could call me. And then she called back</p> <p>21 and said that he wanted to meet with me.</p> <p>22 So I went up there and asked him about it</p> <p>23 and how he had arrived at that being a good</p>
Page 143	Page 145
<p>1 Q. Two-to-one as opposed to one-to-one?</p> <p>2 A. Yes.</p> <p>3 Q. And he said what?</p> <p>4 A. He did say that while I was on vacation, he</p> <p>5 would not sign off on that and that he would</p> <p>6 look into it or -- I can't remember exactly.</p> <p>7 But I left feeling as though I didn't have to</p> <p>8 worry about going on vacation and have a job</p> <p>9 announced and not get an opportunity to apply</p> <p>10 for it. At that point, I didn't know if the</p> <p>11 two-for-one made any difference or not because</p> <p>12 I didn't know what the specs were.</p> <p>13 Q. So he said he would not allow the two-for-one</p> <p>14 to come into effect while you were on</p> <p>15 vacation?</p> <p>16 A. I don't know if he said while I was on</p> <p>17 vacation. I just basically left with the</p> <p>18 feeling that he was now aware of something</p> <p>19 that I didn't know if he was aware of or not.</p> <p>20 Q. Are you saying that he told you that he would</p> <p>21 not allow a change in the substitution</p> <p>22 provision while you were on vacation or not?</p> <p>23 A. I believe that is what he said.</p>	<p>1 thing to do or not to do. And he said that he</p> <p>2 had not realized he signed it, that it was in</p> <p>3 a big stack of stuff and that he had signed</p> <p>4 off on it, not realizing what he was signing.</p> <p>5 Q. He signed off on it while you were on</p> <p>6 vacation?</p> <p>7 A. Yes, or soon thereafter. I just know it came</p> <p>8 about and he had not gotten back with me to</p> <p>9 say one thing or another.</p> <p>10 Q. So what did he say again? He said?</p> <p>11 A. At which time?</p> <p>12 Q. Well, the two-for-one went into effect after</p> <p>13 you got back from your vacation.</p> <p>14 A. Uh-huh. (Positive response.)</p> <p>15 Q. And you called --</p> <p>16 Yes? You said uh-huh.</p> <p>17 A. Yes.</p> <p>18 Q. And you called his office, the Commissioner's</p> <p>19 office, and you wanted to talk to him about</p> <p>20 that, right?</p> <p>21 A. Yes.</p> <p>22 Q. And he said, no, not on the phone, ask her to</p> <p>23 come up, I want to talk to her?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 146

1 A. Yes.  
 2 Q. And you went up and talked to him?  
 3 A. Yes.  
 4 Q. And that's when he told you what?  
 5 A. That that signing off on that was in a big  
 6 stack of other things and that he had not  
 7 realized what he was signing.  
 8 Q. Did he say that he did not intend to initiate  
 9 the two-for-one?  
 10 A. He just looked at me and said, I'm sorry. No,  
 11 he never said that he was initiating the  
 12 two-for-one.  
 13 Q. Well, did he say to you at that meeting that  
 14 he did not intend to initiate the two-for-one,  
 15 he just -- somebody just put something under  
 16 his nose, he signed it, and he never intended  
 17 to initiate the two-for-one?  
 18 A. He said he did not realize what he was  
 19 signing.  
 20 Q. Was he saying, I'm sorry, I didn't get back in  
 21 touch with you before I did it?  
 22 A. I don't know. I can't say what he was  
 23 thinking.

Page 147

1 Q. Did he ever say I'm sorry I signed it at all  
 2 because I never would have signed a  
 3 two-for-one substitution provision?  
 4 A. Well, I was really kind of stunned mostly by  
 5 what he said, that he had accidentally signed  
 6 something. And I said, you have just impacted  
 7 the lives of so many people by that. I mean,  
 8 I was really shocked. And he said, I'm  
 9 sorry. That's all I can tell you.  
 10 Q. Ms. Hubbard, are you accustomed to speaking  
 11 your mind this bluntly --  
 12 MR. MOZINGO: Object to the form.  
 13 Q. -- with people that are your superiors in a  
 14 job position?  
 15 A. What do you mean by bluntly?  
 16 Q. Well, to me, now, I'm just -- I'm  
 17 characterizing it as a very blunt comment.  
 18 But you said to the Commissioner, you have  
 19 just impacted the lives of so many people by  
 20 what you've done. Now, to me, that's a pretty  
 21 blunt statement to someone in his position.  
 22 Are you accustomed to making that type of  
 23 statement?

Page 148

1 MR. MOZINGO: Object to the form.  
 2 A. I don't think I know how to answer what you're  
 3 asking me.  
 4 Q. You apparently don't agree with me that it's  
 5 blunt.  
 6 A. Correct. I don't.  
 7 Q. That's fine. And you also said at this  
 8 meeting --  
 9 A. I felt that I was very respectful to the  
 10 Commissioner when I said that, and when we  
 11 dismissed, I felt I was very respectful.  
 12 Q. Of course, he's one of the nicest guys around.  
 13 A. He is.  
 14 Q. He was respectful, wasn't he?  
 15 A. Very nice.  
 16 Q. In the meeting, in the staff meeting with  
 17 Mr. Ervin who's been the Director of the  
 18 Department of Personnel -- the Central  
 19 Personnel Office for quite some time, you said  
 20 to him, you're saying that you're not  
 21 qualified because you had to have  
 22 substitution; isn't that right?  
 23 A. That's correct.

Page 149

1 Q. Do you think that's not pretty blunt?  
 2 A. I think it's honest and to the point. It was  
 3 asking what I wanted to know. I don't believe  
 4 it was disrespectful or unprofessional.  
 5 Q. I was just curious how you perceived the -- so  
 6 what you're saying is, you don't perceive  
 7 either of those things as being blunt or  
 8 untoward or in-your-face unprofessional?  
 9 A. I do not.  
 10 MR. MOZINGO: Chip, when you get a  
 11 minute, can we go ahead and take  
 12 a break? It's three o'clock.  
 13 MR. NIX: Sure. Take one now if you  
 14 want to.  
 15 MR. MOZINGO: Let's do.  
 16 (Brief recess was taken.)  
 17 Q. Ms. Hubbard, currently, there has been a  
 18 change in the organizational structure within  
 19 your office, correct?  
 20 A. Yes.  
 21 Q. How did that come about?  
 22 A. I guess it was Henry's decision to change who  
 23 reports to who within the office. They called



Deposition of Lynn Hubbard

June 3, 2008

Page 150

1 a meeting and told us.  
 2 Q. Were you ever interviewed by a panel of  
 3 people, three people who were conducting a  
 4 very brief look-see or study --  
 5 A. Yes.  
 6 Q. Were you?  
 7 A. Uh-huh. (Positive response.)  
 8 Q. Yes?  
 9 A. Yes.  
 10 Q. Do you remember who those people were?  
 11 A. I'm assuming now that we're talking about the  
 12 organizational changes and those three people  
 13 that came from Bryce.  
 14 Q. Yes.  
 15 A. It was Deborah Marks from Bryce, Steve Davis  
 16 from Bryce, and Doug Lunsford from State  
 17 Personnel.  
 18 Q. When you talked with them, did you talk with  
 19 them alone or did you talk with them with  
 20 other people in the room? How did that work?  
 21 A. As best I recall, it was just me and the three  
 22 of them.  
 23 Q. Okay. What did they ask you?

Page 151

1 A. They asked me what my duties were.  
 2 Q. Did you tell them?  
 3 A. Yes.  
 4 Q. What else did they ask you?  
 5 A. That's really about all I can remember.  
 6 Q. And it was after that, wasn't it, that the  
 7 changes were made?  
 8 A. Yes.  
 9 Q. Did you know that they were there for the  
 10 purpose of evaluating the Department's  
 11 structure for the purpose of making a  
 12 recommendation with regard to whether certain  
 13 changes should be made in the organizational  
 14 structure and the reporting structure?  
 15 A. No, sir.  
 16 Q. Who do you report to now?  
 17 A. Marilyn Benson.  
 18 Q. How long have you been reporting to Marilyn  
 19 Benson?  
 20 A. Since November of '07. I think it was  
 21 November 19th of '07.  
 22 Q. Okay. How has that been going in terms of --  
 23 A. Fine.

Page 152

1 Q. Is Ms. Benson friendly, nice?  
 2 A. Yes.  
 3 Q. Hopefully everybody is. I mean --  
 4 A. Yes.  
 5 Q. Good. That's good. I'm glad to hear it.  
 6 You were telling me earlier about  
 7 claiming damages for mental pain and anguish,  
 8 and you said that most work days you're  
 9 guarded.  
 10 A. Yes.  
 11 Q. That you used to enjoy your work and ...  
 12 Is there anything else that is contained  
 13 within your mental pain and anguish case?  
 14 A. Anything contained within my mental pain and  
 15 anguish case? (Shakes head from side to  
 16 side.)  
 17 MR. MOZINGO: Are you asking her if  
 18 there are any more examples of  
 19 mental pain and anguish?  
 20 MR. NIX: What I'm asking for --  
 21 MR. MOZINGO: That statement just  
 22 doesn't compute to me.  
 23 MR. NIX: It's not a real good

Page 153

1 statement. It really isn't.  
 2 MR. MOZINGO: Object to the form.  
 3 MR. NIX: There you go.  
 4 Q. I really just want to know everything I can  
 5 know about your mental pain and anguish claim  
 6 and what it consists of. That's all. You're  
 7 saying --  
 8 A. I guess that would go in the line -- this is  
 9 where it gets hard. I'll probably be like  
 10 Joan now and tear up because you're talking  
 11 about personal stuff. I wish I had gotten  
 12 mine over in the morning instead of the  
 13 afternoon.  
 14 I have to take Lexapro. It's an  
 15 antianxiety.  
 16 Q. Is Lexapro the only medication that you're  
 17 taking?  
 18 A. No, sir.  
 19 Q. I mean, for this.  
 20 A. For that, yes.  
 21 Q. I don't want to pry. I really don't.  
 22 A. Thank you.  
 23 Q. Now, who prescribes Lexapro for you?

Deposition of Lynn Hubbard

June 3, 2008

Page 154

1 A. Dr. Kathy Lindsey.  
 2 Q. Is that the same doctor -- no, no, no.  
 3 MR. NIX: Yours is Bimble --  
 4 MS. OWENS: Bipin Kumar.  
 5 MR. NIX: Bipin Kumar.  
 6 MS. OWENS: Bipin Kumar. Indian.  
 7 Wonderful.  
 8 Q. Where does Dr. Lindsey practice?  
 9 A. She is the Alabama Family Practice group here  
 10 in Montgomery.  
 11 Q. Where is that located?  
 12 A. On St. Lukes Drive.  
 13 Q. When did you first start taking Lexapro?  
 14 A. To be honest with you, I don't remember.  
 15 Q. What pharmacy do you use?  
 16 A. CVS pharmacy on Coliseum Boulevard.  
 17 Q. Always that pharmacy?  
 18 A. Prior to that, it was the CVS on Zelda Road.  
 19 Q. Any other pharmacies?  
 20 A. No, sir, not that I remember.  
 21 Q. Now, do you have --  
 22 A. Well, you know --  
 23 Q. I'm sorry.

Page 155

1 A. At one point I used another CVS, but that's in  
 2 the last ten years or so.  
 3 Q. I've got you. What other doctors do you see  
 4 besides Dr. Lindsey?  
 5 A. She's the only doctor I see regularly.  
 6 Q. Do you have any other doctors?  
 7 A. Not that I would call my doctors, no.  
 8 Q. Have you been to any other doctors in the last  
 9 ten years besides Kathy Lindsey?  
 10 A. I had -- This makes me cry.  
 11 Q. You can just tell me who they are.  
 12 A. Dr. -- one of the Wolfs for a CAT scan -- not  
 13 a CAT scan, stress test for my heart. It was  
 14 that Wolf group. I don't remember. I'm  
 15 pretty sure it was Wolf over there at East  
 16 hospital.  
 17 MR. MOZINGO: Wolf or Wool?  
 18 A. Wool.  
 19 THE WITNESS: Thank you.  
 20 Q. W-O-O-L?  
 21 A. I knew it didn't sound right. I think it's  
 22 Kenneth Wool is who I saw.  
 23 Q. Any other doctors?

Page 156

1 A. I had thyroid surgery sometime in the 2000  
 2 year, year group. Dr. Thomas Cawthon did  
 3 that.  
 4 Q. Do you take any kind of thyroid medicine?  
 5 A. Yes, sir.  
 6 Q. What do you take?  
 7 A. Synthroid.  
 8 Q. Go ahead. I'm sorry.  
 9 A. I think that -- Are you asking me if I've seen  
 10 any in the last ten years?  
 11 Q. Right, any other doctors in the last ten  
 12 years.  
 13 A. I believe that's it.  
 14 Q. Okay. I apologize for standing up. It's just  
 15 something I've got to do.  
 16 Ms. Hubbard, you were talking about  
 17 conversations that you had had with the  
 18 Commissioner.  
 19 A. Yes, sir.  
 20 Q. One was before you went on a vacation in May  
 21 of what year?  
 22 A. 2005.  
 23 Q. And you talked to him about the two-to-one

Page 157

1 rule at that time?  
 2 A. Yes, and about the position.  
 3 Q. And about the position. Have you told me  
 4 everything that you can remember about that  
 5 conversation?  
 6 A. Yes, sir.  
 7 Q. Then you went back to see him another time.  
 8 A. Yes.  
 9 Q. And this was after you got back from your  
 10 vacation, correct?  
 11 A. Yes.  
 12 Q. Have you told me everything that you can  
 13 recall about that conversation?  
 14 A. I believe so.  
 15 Q. Have you ever spoken with Commissioner Houston  
 16 about any of the issues in this case at any  
 17 other time?  
 18 A. No, sir.  
 19 Q. So you've only spoken with him on those two  
 20 occasions --  
 21 A. Yes, sir.  
 22 Q. -- is that right?  
 23 A. Well, other than hello and --

Deposition of Lynn Hubbard

June 3, 2008

Page 158	Page 160
<p>1 Q. Right.</p> <p>2 A. Yes.</p> <p>3 Q. But about the issues in this case.</p> <p>4 A. Yes.</p> <p>5 Q. How about Mr. Ervin, about the issues in this</p> <p>6 case?</p> <p>7 A. No, sir, just the one time.</p> <p>8 Q. And that was in that staff meeting?</p> <p>9 A. Yes, sir.</p> <p>10 Q. How about Mr. Dillihay about the issues in</p> <p>11 this case?</p> <p>12 A. We may have spoken about it one time on an</p> <p>13 informal basis.</p> <p>14 Q. What was said?</p> <p>15 A. I really don't remember. What I remember is I</p> <p>16 was in the break room and we said something</p> <p>17 chatting, and he invited me in his office and</p> <p>18 we talked. I don't -- you know, it wasn't a</p> <p>19 big thing.</p> <p>20 Q. No big deal? You don't remember anything that</p> <p>21 was said in that discussion?</p> <p>22 A. I remember that he said he -- he complimented</p> <p>23 me, that I was -- it's embarrassing saying it,</p>	<p>1 Mental Health about the issues in this case?</p> <p>2 A. Not that I -- no, sir.</p> <p>3 Q. Not another soul?</p> <p>4 A. Not about this case, no, sir.</p> <p>5 Q. How about the issues in this case, any of the</p> <p>6 issues that have been raised in the case?</p> <p>7 A. The issues raised in the case to me would be</p> <p>8 the case. I don't understand.</p> <p>9 Q. Yeah. Let me pick out some just key words for</p> <p>10 you. Okay?</p> <p>11 A. Okay.</p> <p>12 Q. The two-for-one rule.</p> <p>13 A. I don't remember saying about -- anything</p> <p>14 except to Marilyn and Joan that I remember.</p> <p>15 Q. Have you already told me what you said to</p> <p>16 Marilyn about the two-for-one rule?</p> <p>17 A. It wasn't that I said anything. It's when she</p> <p>18 told me that they were changing it.</p> <p>19 Q. So that was that, right?</p> <p>20 A. Pretty much.</p> <p>21 Q. That's the only time you've talked with</p> <p>22 Marilyn about the two-for-one rule --</p> <p>23 A. Right.</p>
Page 159	Page 161
<p>1 but he complimented me as a professional or</p> <p>2 whatever.</p> <p>3 Q. Anything else?</p> <p>4 A. No, sir.</p> <p>5 Q. Is that the only time you've spoken with</p> <p>6 Mr. Dillihay?</p> <p>7 A. About this case?</p> <p>8 Q. About this case.</p> <p>9 A. Yes, sir, and it wasn't about this case</p> <p>10 specifically.</p> <p>11 Q. It really wasn't about this case?</p> <p>12 A. Right.</p> <p>13 Q. It was just a general conversation of this</p> <p>14 case?</p> <p>15 A. (Witness nods head up and down.)</p> <p>16 Q. You never spoke with Mr. Dillihay about any of</p> <p>17 the issues in this case, correct?</p> <p>18 A. I have not.</p> <p>19 Q. Have you spoken with Marilyn Benson about any</p> <p>20 of the issues in this case?</p> <p>21 A. Not that I know of.</p> <p>22 Q. Have you ever talked to anybody else that</p> <p>23 worked or works for the Alabama Department of</p>	<p>1 Q. -- is when she announced it?</p> <p>2 Tell me what you said -- you and Joan</p> <p>3 discussed about the two-for-one rule.</p> <p>4 A. We both felt that it was intended to make it</p> <p>5 more difficult for us to apply or to qualify</p> <p>6 or get an interview.</p> <p>7 Q. Why is that?</p> <p>8 A. Because it cuts down on the amount of extra</p> <p>9 experience you would have to count toward the</p> <p>10 score.</p> <p>11 Q. Didn't the two-for-one rule relate to every</p> <p>12 employee in the whole Department?</p> <p>13 A. It did.</p> <p>14 Q. Ever talk to anybody else about the</p> <p>15 two-for-one rule?</p> <p>16 A. Not that I remember specifically.</p> <p>17 Q. Ever talked with anyone about the</p> <p>18 specification -- the announcement -- let's say</p> <p>19 the announcement for the job of Departmental</p> <p>20 Assistant -- Departmental Assistant --</p> <p>21 MR. TARVER: Personnel Manager.</p> <p>22 MR. NIX: Why can't I remember that?</p> <p>23 Q. Departmental Assistant Personnel Manager, have</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 162

1 you talked to anyone about that issue?

2 A. About?

3 Q. About that position, about any aspect of the

4 announcing of that position.

5 A. I don't believe so.

6 Q. Have you ever talked with anyone about the

7 fact that that announcement did not contain

8 the substitution rule or allowance?

9 A. If I did, it was an offhand something. I

10 mean, I don't remember saying anything

11 specifically to anybody.

12 Q. When you and Ms. Owens decided to file your

13 EEOC claims, how many times did you talk?

14 A. I don't know. I mean, there weren't -- it

15 wasn't like meetings about it. We might --

16 you know, impulse comments here or there. I

17 don't know.

18 Q. What you've told me is that you disagree with

19 Ms. Owens' characterization of comparing

20 notes, right?

21 A. Yes.

22 Q. When Ms. Owens was working on her presentation

23 in written form, let's say, for the purpose of

Page 163

1 contesting the denial or the -- yeah, the

2 dismissal and the right to sue, did y'all talk

3 about that?

4 A. I don't remember talking about it other than I

5 did tell -- it was -- I told her that we had a

6 right to file that.

7 Q. Anything else?

8 A. Not that I remember.

9 Q. Have you told me everything that you can

10 recall that you and Joan Owens said with each

11 other, to each other about the EEOC filing?

12 A. The best that I can recall, yes.

13 Q. Have you told me everything that you can

14 recall that was discussed between you and

15 Ms. Owens about the job announcement for this

16 job?

17 A. I would think I have. We didn't have any

18 extensive conversations about it.

19 Q. Have you just made any remarks about it to one

20 another?

21 A. I'm sure we did.

22 Q. But you don't remember what they are?

23 A. (Shakes head from side to side.)

Page 164

1 Q. Have you had any conversations with Ms. Owens

2 about any aspect of the claims presented in

3 this case?

4 MR. MOZINGO: I'm assuming he's

5 asking conversations outside of

6 the presence of your lawyer in

7 seeking joint legal

8 representation, right?

9 MR. NIX: Yeah. Sure.

10 A. I'm sorry. Specifically to what, now? I'm

11 sorry. It's late in the day.

12 Q. The lawsuit, issues.

13 A. The lawsuit.

14 Q. The issues in the lawsuit.

15 A. Other than with the attorney -- we do not talk

16 about it extensively.

17 Q. Other than with your lawyer?

18 A. Yes, sir.

19 Q. When did you first obtain a lawyer to assist

20 you with this matter?

21 A. I don't know the date.

22 Q. Can you give me just a range of time?

23 A. I wish I could, but, no, I don't know.

Page 165

1 Q. Can you give me an occurrence, a transaction,

2 an event after which you obtained assistance

3 from a lawyer?

4 A. It would have been after we got the second

5 finding of the EEOC and the right to sue.

6 Q. Okay.

7 A. It would have been after that.

8 Q. And who was that lawyer?

9 A. Flynn Mozingo is the lawyer that we obtained.

10 Q. Have either you or Ms. Owens to your knowledge

11 been represented by any other lawyer?

12 A. We have not been represented by another

13 lawyer, no.

14 Q. I've got your answers to interrogatories here,

15 and your answer contains some documents that

16 were provided presumably in response to our

17 request for production of documents.

18 The first document that I see is an

19 e-mail from you to David Bennett and Henry

20 Ervin dated Wednesday November 7, 2007, at

21 9:50 a.m. Okay?

22 A. Okay.

23 Q. It says: Sirs, I would like to have this



Page 166	Page 168
<p>1 opportunity to discuss the meeting regarding</p> <p>2 organizational changes in HR which took place</p> <p>3 yesterday. After Joan expressed her concerns,</p> <p>4 many of which I share, I could see that it</p> <p>5 would not be productive to raise these</p> <p>6 concerns at that time with all staff present.</p> <p>7 What were you talking about in that</p> <p>8 sentence?</p> <p>9 A. That was when they called us in to a meeting,</p> <p>10 all of the Personnel people present, and gave</p> <p>11 us a new org chart and they gave us a list of</p> <p>12 problems that were in Personnel.</p> <p>13 Q. Apparently, that meeting occurred on November</p> <p>14 6, because this e-mail refers to yesterday and</p> <p>15 it's dated November 7.</p> <p>16 A. Okay.</p> <p>17 Q. Can you just share with me what you expressed</p> <p>18 in that e-mail?</p> <p>19 MR. MOZINGO: Are you asking her to</p> <p>20 paraphrase it or to read from</p> <p>21 it?</p> <p>22 Q. Well, read it and just tell me what you said,</p> <p>23 basically what you said. I don't think we</p>	<p>1 Q. You're talking about the meeting where Doug</p> <p>2 Lunsford was present --</p> <p>3 A. Yes.</p> <p>4 Q. -- and the other two folks?</p> <p>5 A. Yes.</p> <p>6 Q. You say: I'm requesting your consideration</p> <p>7 with these concerns. I mean, did you ask them</p> <p>8 to do anything?</p> <p>9 A. No. I was just saying -- letting them know</p> <p>10 that I didn't feel -- I was not happy with the</p> <p>11 changes that were made and the manner in which</p> <p>12 it was done.</p> <p>13 Q. Okay. Do you feel like you've been -- there's</p> <p>14 been any kind of retaliation against you for</p> <p>15 the filing of an EEOC claim?</p> <p>16 A. The only thing that I would say was</p> <p>17 retaliation just would be, you know, I'm cut</p> <p>18 out of the loop in Personnel now. You know, I</p> <p>19 just -- things that normally Henry would have</p> <p>20 come to me for, Marilyn might have come to me,</p> <p>21 they go to people that I supervise directly.</p> <p>22 We're just not the same office that we were.</p> <p>23 Q. I mean, is that something you consider to be</p>
Page 167	Page 169
<p>1 need to read it into the record. We can all</p> <p>2 read. But what were you getting at?</p> <p>3 A. I was objecting to being given the supervisory</p> <p>4 responsibility for the Personnel Specialist</p> <p>5 I.</p> <p>6 Also, I expressed that the Departmental</p> <p>7 Assistant Personnel Manager was created to</p> <p>8 assist Mr. Ervin and yet I was being given</p> <p>9 additional supervisory responsibilities.</p> <p>10 And, also, that I objected to the way in</p> <p>11 which it was presented to me, as</p> <p>12 organizational changes with all the</p> <p>13 subordinate staff present instead of calling</p> <p>14 me in and talking about my job duties and</p> <p>15 saying we're going to change your duties and</p> <p>16 blah, blah, blah.</p> <p>17 Also, that -- my embarrassment about</p> <p>18 being called in to be interviewed by people</p> <p>19 from facilities to find out what we do, that</p> <p>20 they were apparently being given the</p> <p>21 assignment to find out what was wrong with the</p> <p>22 Human Resources Office at Central Personnel</p> <p>23 and that I found it demeaning.</p>	<p>1 retaliation, or that's just a fact of life in</p> <p>2 terms of the way things have worked out?</p> <p>3 A. I think if I had not filed the EEOC, that</p> <p>4 probably would not be the case, but I can't</p> <p>5 say that for sure.</p> <p>6 Q. You haven't made a claim for retaliation?</p> <p>7 A. No, sir.</p> <p>8 Q. Are you aware of any occurrences of</p> <p>9 discrimination or contended or alleged</p> <p>10 discrimination at Mental Health that is in any</p> <p>11 way similar to the claims you make in this</p> <p>12 case?</p> <p>13 MR. MOZINGO: Object to the form.</p> <p>14 A. I'm not privy to other claims of</p> <p>15 discrimination at the Department.</p> <p>16 Q. You're unaware of any; is that right?</p> <p>17 A. The only thing that I would -- yes, I'm not</p> <p>18 aware of any. That's true.</p> <p>19 Q. What is this, summary information from the</p> <p>20 audit report? It's a part of your response to</p> <p>21 the request for production of documents.</p> <p>22 A. This is what they handed out to us at that</p> <p>23 meeting we were just talking about.</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 170

1 Q. The meeting where the organizational structure  
2 was changed?  
3 A. Yes, sir.  
4 Q. This is an e-mail from Marilyn Benson to Lynn  
5 Hubbard, and there's a trail there. Let's  
6 see. From Lynn Hubbard to Marilyn Benson  
7 prior to ...  
8 You have to go to the back, don't you,  
9 for these things?  
10 A. It starts at the bottom if it's an e-mail.  
11 Q. Okay. So February 28, 2008, from Hubbard to  
12 Benson. Hey, Marilyn, where are we on the  
13 request for exceptional increase for Jodi?  
14 Also, remember that I will be leaving at one  
15 o'clock today.  
16 And then Marilyn back to you. It's  
17 ironic you should ask. I just asked Henry  
18 about that this morning. He said that -- he  
19 said Mr. Bennett had indicated to him that he  
20 was going to approve it, but he has not given  
21 it back to me. He's out of the office until  
22 next week. I don't -- If I don't get it back  
23 by Wednesday, I will ask him about it once

Page 171

1 again.  
2 What was that all about, the exceptional  
3 increase for Jodi?  
4 A. I had gone to Henry or Marilyn or both of them  
5 together and said that I thought we should --  
6 I don't know. Maybe I wrote it up first. But  
7 I initiated a request to give Jodi Smith an  
8 exceptional raise increase because of her --  
9 because of what she had done during a  
10 transition between her position and another  
11 staff employee being out.  
12 Q. Why did you produce this document, do you  
13 recall, this e-mail trail?  
14 A. I don't remember producing it.  
15 Q. You don't remember producing it?  
16 A. No, sir.  
17 Q. This is an e-mail dated June 11, 2007. Would  
18 you explain to me what that's about.  
19 A. I had been given a job announcement for a  
20 Staff Development Specialist II that Marilyn  
21 had written and then assigned to me to work.  
22 And in reviewing the announcement, I noticed  
23 that the announcement did not coincide with

Page 172

1 the job spec for that position.  
2 Q. Which job spec?  
3 A. The Staff Development Specialist II.  
4 Q. But, I mean, like do you mean the job spec  
5 that had been developed when the study was  
6 done in 1985 or the job spec that had to do  
7 with the Segal report?  
8 A. To my knowledge, those of the Segal report  
9 have not been implemented, so we were still in  
10 the same system.  
11 Q. 1985?  
12 A. Uh-huh. (Positive response.)  
13 Q. Go ahead.  
14 A. The job spec called for, I believe it was, 48  
15 months of staff development experience, but  
16 the announcement had been written for 48  
17 months of performance improvement experience.  
18 Q. Okay.  
19 A. So I had gone to Marilyn and asked her if  
20 there was something that I didn't know about,  
21 why that would be different than the job spec,  
22 because the qualifications had been changed.  
23 And at that time, Marilyn said that you could

Page 173

1 change the qualifications on a job spec, from  
2 the job spec to the announcement.  
3 Q. The original job spec required 48 months of  
4 staff development experience?  
5 A. I believe so.  
6 Q. And what had been written there?  
7 A. 48 months of performance improvement  
8 experience.  
9 Q. Okay. So you had asked Marilyn about it; is  
10 that right?  
11 A. Yes, because she had written the announcement.  
12 Q. And you're saying, why is it different from  
13 the --  
14 A. Spec.  
15 Q. -- spec? Why is the announcement different  
16 from the spec?  
17 A. Yes.  
18 Q. And she said?  
19 A. She said that you could change the  
20 qualification requirements and they could be  
21 different than what was on the job spec.  
22 Q. And then what?  
23 A. And then I said, we've never been able to do



Page 174

1 that before, that the job announcements have  
2 to be based on the job spec.

3 Q. Okay. Then what?

4 A. And she said -- let me see if I can remember  
5 the course of events. Basically, she just  
6 said that it was okay to do it.

7 Well, that left me with publishing the  
8 announcement and working a job that was to me  
9 in violation of our own policies and  
10 procedures. So at that point, I went to -- I  
11 believe I went to Mr. Bennett and expressed my  
12 concern about it.

13 And then he called a meeting -- first, he  
14 called a whole staff meeting, and then he left  
15 some of us together. And at that meeting,  
16 both Henry and Marilyn indicated that you  
17 could do that to Mr. Bennett.

18 Mr. Bennett had been a Personnel Manager  
19 III, but he asked Henry and Marilyn if you  
20 could do it, if it was a practice of the  
21 Department to write an announcement that was  
22 contrary to the qualifications on the job  
23 spec, and Marilyn said yes.

Page 175

1 This was just completely contrary to  
2 anything I had ever heard before. I expressed  
3 that to Mr. Bennett. I was really surprised  
4 that Marilyn and Henry both sat there and said  
5 that.

6 And so I sent an e-mail to Mr. Bennett  
7 also saying if this was the case, that I  
8 didn't think the other Personnel Managers were  
9 aware of it and that we might need to send  
10 something out, and then also I needed to know  
11 how to proceed.

12 Then apparently, Mr. Bennett did look  
13 into it and sent me the e-mail saying that  
14 apparently that I was correct and you could  
15 not change it. You couldn't change minimum  
16 qualifications from the job specs.

17 Q. So why did you produce that in this case?

18 A. Because I think it's pertinent to people that  
19 Marilyn and Henry obey policies and procedures  
20 capriciously.

21 Q. Okay.

22 MR. NIX: What does that mean? It's  
23 got two numbers.

Page 176

1 MR. MOZINGO: That is an ambiguous  
2 page. I don't even know what it  
3 means. Shouldn't have been  
4 produced. They don't know what  
5 it means. That was supposed to  
6 be removed.

7 MR. NIX: Okay. Thank you.

8 Q. Another thing you produced was an  
9 announcement -- re-announcement, actually, for  
10 Manager of Employee Relations. Why did you  
11 produce that?

12 A. Because I had shared with --

13 THE WITNESS: Do I have to say what  
14 I've shared with you?

15 MR. MOZINGO: No. Our discussions  
16 are privileged, so ...

17 If you know why you think  
18 it's relevant to the discovery  
19 request, you can answer that  
20 question, but our conversations  
21 are privileged. I'm instructing  
22 you not to disclose anything  
23 we've discussed.

Page 177

1 A. I don't think I can answer it other than what  
2 I discussed with him, with my attorney.

3 Q. So you have no independent knowledge of why  
4 this was put with the production of documents  
5 that you submitted, correct?

6 A. Do you mean why I gave it to my attorney or  
7 why they produced it to you?

8 Q. Why it was produced to me.

9 A. I don't know.

10 Q. Relative to which request?

11 A. (Shakes head from side to side.)

12 Q. No?

13 A. I don't know why they did it.

14 Q. Why did you give it to your lawyer?

15 MR. MOZINGO: I'm going to object to  
16 the extent that would call her  
17 to disclose any communication  
18 she's had with me regarding that  
19 document.

20 In other words, if her  
21 motive for doing it would be a  
22 motive with respect to her legal  
23 representation and disclosing

Page 178	Page 180
<p>1 documents to her attorney for</p> <p>2 legal representation, I think</p> <p>3 that would be part of the same</p> <p>4 communication. I don't see how</p> <p>5 you could extrapolate a motive</p> <p>6 from the communication.</p> <p>7 MR. NIX: This is what I've got,</p> <p>8 though. I've got a document</p> <p>9 that's produced pursuant to the</p> <p>10 request for production.</p> <p>11 MR. MOZINGO: Why don't we do this.</p> <p>12 Let me step outside with her and</p> <p>13 we'll go over it. Maybe we can</p> <p>14 clarify it and come back and --</p> <p>15 MR. NIX: That's fine.</p> <p>16 (Brief recess was taken.)</p> <p>17 MR. MOZINGO: I think the question</p> <p>18 was why she produced that</p> <p>19 document.</p> <p>20 MR. NIX: Right.</p> <p>21 A. Because I feel that's another example of a job</p> <p>22 spec that was written specifically for someone</p> <p>23 and that it was written for Henry.</p>	<p>1 Q. And that there was a group of people that</p> <p>2 applied; is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. And there was an interview process?</p> <p>5 A. That's correct.</p> <p>6 Q. Do you know who graded the applications?</p> <p>7 A. I don't.</p> <p>8 Q. Do you know who participated in the interview</p> <p>9 process?</p> <p>10 A. I don't.</p> <p>11 Q. And you don't know whether any job has been</p> <p>12 awarded from it or not?</p> <p>13 A. I don't.</p> <p>14 Q. It's Manager of Employee Relations. Is that</p> <p>15 the name of the job?</p> <p>16 A. Yes.</p> <p>17 Q. And the job location is Partlow Development --</p> <p>18 Developmental Center in Tuscaloosa; is that</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. The next document is Manager of Employee</p> <p>22 Relations.</p> <p>23 A. That's the spec.</p>
Page 179	Page 181
<p>1 Q. Okay. When I asked you that initially, why</p> <p>2 did you not know it initially?</p> <p>3 A. I did know it, but I didn't want -- I'm tired,</p> <p>4 and I didn't want to open up a can of worms.</p> <p>5 Because what I was going to say was that Henry</p> <p>6 had told us that they were going to write him</p> <p>7 a job.</p> <p>8 That's what I had told my attorney, and</p> <p>9 then I thought, well, maybe I'm not supposed</p> <p>10 to talk about what I told my attorney. But</p> <p>11 that is why, is because I think the job spec</p> <p>12 was for Henry.</p> <p>13 Q. When did Henry tell you they were going to</p> <p>14 write him a job?</p> <p>15 A. He probably started talking about that -- I</p> <p>16 know it's probably been two years ago.</p> <p>17 Q. Well, do you know whether or not this job has</p> <p>18 been filled?</p> <p>19 A. I know that it's -- they've interviewed is the</p> <p>20 only published -- I don't know the ...</p> <p>21 Q. So you know that the announcement went out</p> <p>22 then?</p> <p>23 A. Yes, that announcement went out.</p>	<p>1 Q. That's the spec. And that is -- Is that a</p> <p>2 spec that has existed? Do you know?</p> <p>3 A. No, sir.</p> <p>4 Q. It is not a spec that has existed?</p> <p>5 A. It's not. It is a new position.</p> <p>6 Q. Is it? How do you know that?</p> <p>7 A. Because I know we've never had a Manager of</p> <p>8 Employee Relations before. And I believe I</p> <p>9 saw the Exempt Pay Plan Change that said a new</p> <p>10 class had been established.</p> <p>11 Q. Here is another one.</p> <p>12 A. I think that's a duplicate.</p> <p>13 Q. You think it's a duplicate?</p> <p>14 A. I think it is.</p> <p>15 Q. So the Manager of Employee Relations spec</p> <p>16 appears next after the announcement, then</p> <p>17 Manager of Employee Relations spec --</p> <p>18 A. Do they have the same dates at the bottom? Is</p> <p>19 there a revision date? It looked to me like</p> <p>20 it was just duplicate copies. I don't know.</p> <p>21 Q. There's a date at the bottom here that says</p> <p>22 December 2006. Do you see that?</p> <p>23 A. Yes, sir.</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 182

1 Q. Do you want to look at the other one?  
 2 A. Does that say December '07?  
 3 Q. Down at the bottom right. I don't know if it  
 4 means the same thing.  
 5 A. They may be the exact same, only different  
 6 revised dates. I don't know.  
 7 Q. Those are the documents you produced.  
 8 Now, you did work on your computer on  
 9 this case, right?  
 10 A. I did.  
 11 Q. You completed a bunch of stuff, filled out or  
 12 wrote down or typed in what -- input into the  
 13 computer information concerning your EEOC  
 14 file, right?  
 15 A. I did.  
 16 Q. There is a person named Traywick in the legal  
 17 department if I'm not mistaken -- I think in  
 18 the legal department. Are you familiar with a  
 19 person named Traywick in the legal department?  
 20 MR. TARVER: He used to be in the  
 21 legal department.  
 22 MR. NIX: Used to be in the legal  
 23 department. How about a female?

Page 183

1 MR. TARVER: There's a Linda  
 2 Traywick who is the  
 3 Administrative Assistant to the  
 4 Associate Commissioner for  
 5 Administration.  
 6 Q. Do you know Linda Traywick?  
 7 A. I do.  
 8 Q. What's her job?  
 9 A. I don't know if I know her class title, but  
 10 she's the assistant to the Associate  
 11 Commissioner for Administration.  
 12 Q. Have you discussed this case with Linda  
 13 Traywick?  
 14 A. No.  
 15 Q. Have you sent Linda Traywick any documentation  
 16 about this case?  
 17 A. No documentation about this case, no.  
 18 Q. Has she sent to you any documentation about  
 19 this case?  
 20 A. I don't -- No, sir.  
 21 Q. Have you used your telephone at work to  
 22 contact anyone relative to this case --  
 23 A. I've spoken --

Page 184

1 Q. -- or the EEOC?  
 2 A. Yes, I've spoken to the EEOC, and I've spoken  
 3 to my attorney on the phone.  
 4 Q. Have you spoken long distance to EEOC on the  
 5 telephone?  
 6 A. I think it's an 800 number, but I can't tell  
 7 you that for sure.  
 8 Q. That's long distance, right?  
 9 A. Yes, sir.  
 10 Q. Do you know where that rings? Birmingham?  
 11 Atlanta?  
 12 A. The Birmingham office is who I was in contact  
 13 with on how to file.  
 14 Q. Is that the only office you've spoken with?  
 15 A. I believe I spoke to -- I think initially I  
 16 called a hotline number, and I think someone  
 17 from Washington called me back and referred me  
 18 to the Birmingham office.  
 19 Q. Okay.  
 20 (Defendant's Exhibit 17 was marked  
 21 for identification.)  
 22 Q. Let me show you what I've marked as  
 23 Defendant's Exhibit 17-Hubbard.

Page 185

1 Ms. Hubbard, I'm not going to staple  
 2 these documents together unless you tell me  
 3 they belong together. Okay.  
 4 A. Okay.  
 5 Q. Two documents there. Do those belong  
 6 together?  
 7 A. Those could belong together. I can't say for  
 8 sure, but they're the same --  
 9 Q. Are they the same date?  
 10 A. Yes.  
 11 Q. The fax cover sheet says it's a two-page fax.  
 12 There's a cover page and a letter there.  
 13 There's two pages.  
 14 A. Yes.  
 15 Q. So do you think they belong together?  
 16 A. Yes, sir.  
 17 (Brief interruption.)  
 18 Q. I will go ahead and staple these two  
 19 together. Defendant's Exhibit 17 will be a  
 20 two-page document consisting of a fax from the  
 21 Department of Mental Health, Mental  
 22 Retardation from Karen Hubbard to Sherry  
 23 Guenster at EEOC.

Page 186	Page 188
<p>1 There's a letter in here, informed by</p> <p>2 Ms. Veneda Jordan that my case had been</p> <p>3 assigned to you dated November 6, 2006. I</p> <p>4 have additional information that I would like</p> <p>5 to present at that time.</p> <p>6 Take a look at it and tell me what</p> <p>7 additional information you're talking about.</p> <p>8 A. I don't remember what it was.</p> <p>9 Q. You were telling her basically before any</p> <p>10 decision was made, you would like to submit</p> <p>11 some additional material?</p> <p>12 A. That's what it appears to be, that there was</p> <p>13 something else. I didn't want her to rule</p> <p>14 before she considered it.</p> <p>15 Q. Do you remember what it was?</p> <p>16 A. I don't remember what it was.</p> <p>17 Q. Let me ask you to look through this material.</p> <p>18 The first part of it is a letter to Bernice</p> <p>19 Williams-Kimbrough dated September 18, 2006,</p> <p>20 signed by you with attachments. There are</p> <p>21 these attachments. I assume -- This was all</p> <p>22 in your EEOC file. Okay?</p> <p>23 A. Okay.</p>	<p>1 can find a clue as to what attachment ten was.</p> <p>2 Q. Are you able to describe it?</p> <p>3 MR. MOZINGO: Look at the back</p> <p>4 page. I read the same letter.</p> <p>5 It refers to attachment ten</p> <p>6 there. That could be it.</p> <p>7 (Brief interruption.)</p> <p>8 A. Okay. What are you saying? You couldn't</p> <p>9 locate attachment ten?</p> <p>10 Q. I'm just trying to make sure I understood</p> <p>11 where -- you found it?</p> <p>12 A. Uh-huh. (Positive response.)</p> <p>13 Q. What's included with it?</p> <p>14 A. As the letter states, the letter that</p> <p>15 Mr. Ervin wrote to the Commissioner,</p> <p>16 requesting to create a Departmental Assistant</p> <p>17 Personnel Manager position.</p> <p>18 Q. Would you take out of that stack right there</p> <p>19 whatever is the complete part of ten.</p> <p>20 A. This could have been part of this.</p> <p>21 Q. I would say it would be. That's my</p> <p>22 interpretation of it anyway.</p> <p>23 A. This here.</p>
Page 187	Page 189
<p>1 Q. What I would like for you to do, if you would,</p> <p>2 is take your letter and look at it real quick</p> <p>3 and confirm that's your letter first of all.</p> <p>4 A. Okay.</p> <p>5 Q. Is it?</p> <p>6 A. Yes, sir.</p> <p>7 Q. I could not figure out where the attachments</p> <p>8 started and stopped in that group of</p> <p>9 documents. I sure hope you can help me with</p> <p>10 that. I'd like to know.</p> <p>11 A. My attachments?</p> <p>12 Q. Your attachments.</p> <p>13 A. This was --</p> <p>14 Q. What was that number right there on that</p> <p>15 page? Go ahead.</p> <p>16 A. I probably attached all these. I mean, do you</p> <p>17 want me to make sure there's not something</p> <p>18 that I didn't or ...</p> <p>19 Q. Well, I counted in your letter -- when you</p> <p>20 wrote your letter, the attachment numbers</p> <p>21 stopped at ten, I think. If I'm not mistaken,</p> <p>22 ten was the last attachment number that I saw.</p> <p>23 A. Let's see what I said. I'm trying to see if I</p>	<p>1 Q. Would you put all of the attachments that go</p> <p>2 with that letter in one stack and give them to</p> <p>3 me.</p> <p>4 A. I'm hoping that that's it.</p> <p>5 (Defendant's Exhibit 18 was marked</p> <p>6 for identification.)</p> <p>7 Q. Let us do this, take this in chronological</p> <p>8 order.</p> <p>9 A. I still have part of what you gave me over</p> <p>10 here.</p> <p>11 Q. I know you do. Do you want me to take it back</p> <p>12 from you?</p> <p>13 This is a September 25, 2006, letter from</p> <p>14 you to Emanuel Smith, Regional Attorney, U.S.</p> <p>15 Equal Employment Opportunity Commission,</p> <p>16 Dear Mr. Smith, giving your EEOC charge</p> <p>17 number. This is to request my charge be</p> <p>18 reopened before the expiration date of October</p> <p>19 8, 2006.</p> <p>20 Did you write that letter? Is that your</p> <p>21 letter?</p> <p>22 A. Yes, sir.</p> <p>23 (Defendant's Exhibit 19 was marked</p>



Deposition of Lynn Hubbard

June 3, 2008

Page 190	Page 192
<p>1 for identification.)</p> <p>2 Q. Defendant's Exhibit 19-Hubbard is an October</p> <p>3 4, 2006, letter from Bernice Williams-</p> <p>4 Kimbrough to Karen Hubbard acknowledging</p> <p>5 receipt of that -- of some material.</p> <p>6 What does that say? Does it say material</p> <p>7 or letter?</p> <p>8 A. The Commission is in receipt of the additional</p> <p>9 information you provided.</p> <p>10 Q. Are you aware of or do you recall any</p> <p>11 additional information to this letter to</p> <p>12 Ms. Smith at EEOC prior to receiving that</p> <p>13 October 4 letter?</p> <p>14 A. I'm sorry. Will you say that again.</p> <p>15 Q. Did you send EEOC anything other than this</p> <p>16 letter of September 25th --</p> <p>17 Is that what the date is?</p> <p>18 A. Yes.</p> <p>19 Q. -- to Emanuel Smith? Did you send anything</p> <p>20 other than that to the EEOC before you</p> <p>21 received this October 4 letter?</p> <p>22 A. I'm sorry. I am brain dead, I guess. Did I</p> <p>23 receive --</p>	<p>1 Q. So the October 4 letter from</p> <p>2 Ms. Williams-Kimbrough, Exhibit 19, was</p> <p>3 responding to your letter of September 18,</p> <p>4 2006, which I am marking as Defendant's</p> <p>5 Exhibit 20.</p> <p>6 (Defendant's Exhibit 20 was marked</p> <p>7 for identification.)</p> <p>8 A. Okay.</p> <p>9 Q. Is that right?</p> <p>10 A. Yes.</p> <p>11 (Defendant's Exhibit 21 was marked</p> <p>12 for identification.)</p> <p>13 Q. And then Defendant's 21-Hubbard is a letter</p> <p>14 dated October 5, 2006, from Bernice</p> <p>15 Williams-Kimbrough which is entitled Notice of</p> <p>16 Intent to Reconsider.</p> <p>17 A. Okay.</p> <p>18 Q. Did you receive that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Subsequent to your receipt of that, did you</p> <p>21 provide EEOC with any material or information?</p> <p>22 A. I don't remember.</p> <p>23 Q. So before all of the correspondence we just</p>
Page 191	Page 193
<p>1 Q. Did you send anything else other than the</p> <p>2 September 25 letter to the EEOC before you got</p> <p>3 this October 4 letter?</p> <p>4 A. I don't know. It doesn't connect with me. I</p> <p>5 don't understand. Did I send anything to the</p> <p>6 EEOC between September 25th and October 4th?</p> <p>7 Q. Right.</p> <p>8 A. I would have sent what went with this letter</p> <p>9 to Bernice Williams-Kimbrough, I guess, to</p> <p>10 the --</p> <p>11 Was she in the Birmingham or Atlanta</p> <p>12 office?</p> <p>13 Q. That's her letter to you.</p> <p>14 A. She's responding to something I sent to her.</p> <p>15 She's not responding to this.</p> <p>16 Q. So my question is, was the material that she's</p> <p>17 referring to the material that you've just</p> <p>18 identified for me -- well, no. That's the</p> <p>19 additional material. I'm sorry. This</p> <p>20 material.</p> <p>21 A. It looks like I sent her this on September the</p> <p>22 18th, and then I sent a letter to Mr. Smith on</p> <p>23 the 25th.</p>	<p>1 talked about, you had received a dismissal of</p> <p>2 your charge, correct --</p> <p>3 A. Yes.</p> <p>4 Q. -- and some additional information which said</p> <p>5 you had a right to sue if you wanted to, and</p> <p>6 you filed a request that it be reopened and</p> <p>7 reheard?</p> <p>8 A. Uh-huh. (Positive response.)</p> <p>9 Q. You sent material --</p> <p>10 A. Yes.</p> <p>11 Q. You sent material to Ms. Kimbrough. She</p> <p>12 acknowledged receipt. And then on October 5,</p> <p>13 2006, she sent you a Notice of Intent to</p> <p>14 Reconsider; is that right?</p> <p>15 A. That's right.</p> <p>16 (Defendant's Exhibit 22 was marked</p> <p>17 for identification.)</p> <p>18 Q. Defendant's Exhibit 22-Hubbard is what?</p> <p>19 A. It's a notice of right to sue from the</p> <p>20 Department of Justice.</p> <p>21 Q. To who?</p> <p>22 A. To me.</p> <p>23 Q. What does it say?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 194

1 A. The Department of Justice will not file suit  
2 on the above-referenced charge of  
3 discrimination that was referred to us by the  
4 Equal Employment Opportunity Commission.  
5 Q. And then it explains that you have a 90-day  
6 period of time within which you may file a  
7 lawsuit; is that right?  
8 A. Well, it says Notice of Right to Sue Within 90  
9 Days.  
10 Q. Ms. Hubbard, have you told me every reason  
11 based on your recollection of our conversation  
12 today, every reason that you claim you were  
13 discriminated against because of your race?  
14 A. To the best of my knowledge, yes.  
15 Q. In addition to the damages that you've  
16 requested -- and we don't have an amount, but  
17 in addition to whatever damages you are  
18 requesting in terms of monetary relief, you've  
19 also requested some injunctive relief or what  
20 some people call equitable relief. Do you  
21 know what I'm talking about?  
22 A. No, sir.  
23 Q. You've asked the court to require the

Page 195

1 Department to do some things -- specific  
2 things. Do you know what I'm talking about?  
3 A. I believe so.  
4 Q. What do you want the court to require the  
5 Department to do in this case?  
6 A. To remove Ms. Benson from the position and  
7 announce it in an open, competitive manner so  
8 that I would have an opportunity to apply.  
9 Q. So you're saying it was not announced in an  
10 open and competitive manner?  
11 A. I'm saying that not putting the substitution  
12 clause in there prohibited it from being that.  
13 Q. Let me ask you this. Wouldn't you agree with  
14 me that at some point in time in the near  
15 future, the Segal recommendations will have  
16 been implemented by way of modified or new job  
17 specifications?  
18 MR. MOZINGO: Object to the form.  
19 Q. That's what you're working on now, isn't it?  
20 You're trying to develop all of the job  
21 specifications that will be necessary in the  
22 future?  
23 MR. MOZINGO: Same objection.

Page 196

1 A. I know that they're working on a wage and  
2 class survey. I don't know what part, if any,  
3 of that will be implemented, and if so, when.  
4 Q. Assume that the qualification requirements set  
5 forth by Segal in their final report in  
6 November 2007 regarding the Human Resources  
7 group of employees is implemented within,  
8 let's say, 30 days and the job position held  
9 by Ms. Benson, Departmental Assistant  
10 Personnel Manager or whatever -- I think  
11 Assistant Human Resources Manager is what  
12 Segal recommended it be changed to and  
13 modernized to.  
14 But assume that's been implemented as per  
15 the Segal recommendation. Would you expect  
16 the court to require the Department to use  
17 something like substitution in the  
18 specification in re-announcing it, even in  
19 view of the fact that it's now been changed so  
20 that there is no substitution requirement?  
21 A. Yes.  
22 Q. Why is that?  
23 MR. MOZINGO: That was so quick, I

Page 197

1 couldn't get that objection in.  
2 I object to the form of that  
3 question, and I further object  
4 to -- she can't -- there's a  
5 difference between what she may  
6 want the court to do and  
7 expecting from the court. I  
8 don't think any of us have any  
9 right to expect anything from  
10 the court. We may request for  
11 relief, but the court is the  
12 fact-finder and rules on the  
13 law.  
14 So there's a lot you're  
15 asking her to assume and to  
16 consider that -- I don't think  
17 she's in any position to answer  
18 that question, but with that  
19 objection ...  
20 Q. So you think the court should -- even if the  
21 spec has been clearly made to comport with the  
22 Segal qualification, which also does not  
23 require substitution, that the court should



Deposition of Lynn Hubbard

June 3, 2008

Page 198	Page 200
<p>1 simply change the Department's spec?</p> <p>2 MR. MOZINGO: Object to the form.</p> <p>3 A. Yes.</p> <p>4 Q. Why?</p> <p>5 A. Because my case is based on the violations</p> <p>6 that occurred at the time when the job was</p> <p>7 announced and with the specs and the series</p> <p>8 that were in place when it was announced, not</p> <p>9 three years after the fact.</p> <p>10 Q. Is it your contention that there was a</p> <p>11 conspiracy to violate your Title 7 rights --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- by some or all of the defendants in the</p> <p>14 case?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Would you explain that conspiracy to me and</p> <p>17 tell me who participated in it and tell me how</p> <p>18 they participated in it.</p> <p>19 A. That all knowledge of the job and all input of</p> <p>20 the job was kept secret, that only particular</p> <p>21 members were able to have input into it, and</p> <p>22 that those -- some of those members in their</p> <p>23 unique positions in the Department were able</p>	<p>1 abilities and so forth should have been</p> <p>2 presented to the Job Evaluation Committee, and</p> <p>3 they should have been made aware that this was</p> <p>4 a new classification and, also, that there was</p> <p>5 a change in the way this particular Personnel</p> <p>6 job from the other Personnel jobs, that they</p> <p>7 were not going to allow substitution, and then</p> <p>8 they should have let the Job Evaluation</p> <p>9 Committee vote on whether or not they approved</p> <p>10 such an action.</p> <p>11 Q. What else in the process?</p> <p>12 A. And then if the Job Evaluation Committee</p> <p>13 approved it, it would go to the Commissioner</p> <p>14 for final approval. If they had any</p> <p>15 objections to it, it would have had to have</p> <p>16 been addressed at that time before it went to</p> <p>17 the Commissioner.</p> <p>18 Q. You're saying that was not done here?</p> <p>19 A. Yes, I'm saying it was not done here.</p> <p>20 Q. Have you spoken with anybody that was on the</p> <p>21 JEC in this time frame that has told you that</p> <p>22 the JEC did not receive a copy of this</p> <p>23 specification to look at it and pass on it?</p>
Page 199	Page 201
<p>1 to manipulate policies and procedures in order</p> <p>2 to get things done, and I think they did that</p> <p>3 intentionally.</p> <p>4 Q. Who are you talking about?</p> <p>5 A. Henry Ervin, Otha Dillihay, Marilyn Benson,</p> <p>6 and John Houston.</p> <p>7 Q. Is it your contention in the case that these</p> <p>8 four people intentionally conspired to deprive</p> <p>9 you and Ms. Owens of your right not to be</p> <p>10 discriminated against by the manner in which</p> <p>11 this specification was adopted and by the</p> <p>12 exclusion -- or by the spec not being written</p> <p>13 to include the substitution provision? Is</p> <p>14 that your contention?</p> <p>15 A. Yes, and in not following the procedures and</p> <p>16 getting the spec approved as well.</p> <p>17 Q. Let me ask you this. If the procedures had</p> <p>18 been followed, okay, with regard to the</p> <p>19 specification, what would those procedures</p> <p>20 have entailed?</p> <p>21 A. The finished class specification with the</p> <p>22 minimum qualification requirements and all the</p> <p>23 related information, knowledge, skills,</p>	<p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. Judith Johnston.</p> <p>4 Q. When did she tell you this?</p> <p>5 A. The first time she told me that personally was</p> <p>6 last night.</p> <p>7 Q. I'm sorry?</p> <p>8 A. Last night.</p> <p>9 Q. Last night?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Where did you see her?</p> <p>12 A. I spoke with her over the phone.</p> <p>13 Q. Tell me about that conversation.</p> <p>14 A. Joan had talked to Judith previously, and she</p> <p>15 let Judith know that our attorney wanted to</p> <p>16 speak with her, and Judith consented. And we</p> <p>17 got on speaker phone, and Flynn talked to</p> <p>18 Judith and asked her questions, was that, in</p> <p>19 fact, true.</p> <p>20 Q. Was it true that?</p> <p>21 A. They did not review the job specs for the</p> <p>22 position.</p> <p>23 Q. What did she say?</p>

Deposition of Lynn Hubbard

June 3, 2008

Page 202

1 A. She said they did not. They definitely did  
2 not, something to that effect.  
3 Q. Did she say how she remembered so clearly they  
4 did not?  
5 A. No, sir.  
6 Q. Did she say anything about the possibility of  
7 her having been absent when they were  
8 reviewed?  
9 A. No, sir.  
10 Q. Do you think that's a possibility, that she  
11 was absent?  
12 A. I don't ... I have no idea.  
13 Q. Did she say that that was a requirement, that  
14 the JEC review the spec and make a  
15 recommendation to the Commissioner regarding  
16 it?  
17 A. I don't remember if she spoke to that last  
18 night or not.  
19 Q. Did she say anything else about the case last  
20 night?  
21 A. No, sir.  
22 Q. Have you spoken with anyone else that was on  
23 the JEC at this time --

Page 203

1 A. No, sir.  
2 Q. -- that has told you anything about this  
3 particular job specification?  
4 A. No, sir.  
5 Q. In your complaint, you say that the Department  
6 violated certain policies and procedures. Are  
7 the policies and procedures that you contend  
8 in the complaint that were violated by the  
9 Department, have they already been explained  
10 to me by you, or are there more or others?  
11 A. To the best that I recall, we've talked about  
12 them.  
13 Q. Did I ask you if you're aware of any similar  
14 situations to this?  
15 MR. MOZINGO: You did.  
16 MR. NIX: That's what I thought.  
17 Q. Have you told me about all conversations  
18 you've had, Ms. Hubbard, with Ms. Owens about  
19 any part of this case?  
20 A. To the best that I can recall. Like I said,  
21 they've been vague from time to time, but I  
22 don't really remember what we've talked about.  
23 Q. Is there anyone else that either is or was

Page 204

1 with the Department of Mental Health that  
2 you've spoken with that we haven't talked  
3 about that relates to this case?  
4 MR. MOZINGO: Object to the form.  
5 I'm not sure I understand that  
6 question.  
7 Q. Is there any other person that you've spoken  
8 with about this case or about the facts of  
9 this case or the issues in this case other  
10 than the people you've already told me about?  
11 A. The only thing -- I mean, there may be people  
12 that I've mentioned I'm in a case, but no  
13 details about it, no description of the case.  
14 Q. Did you talk to anyone at EEOC about Lula  
15 Bell?  
16 A. Yes.  
17 Q. Who?  
18 A. Her supervisor, Veneda Jordan.  
19 Q. Tell me about that.  
20 A. At some point during this process, I shared  
21 with her my concern that Ms. Bell had not  
22 actually done an investigation and about her  
23 demeanor with me the one time that I did

Page 205

1 talk -- well, actually, I may have talked to  
2 her twice, and that was the extent of it.  
3 Q. So you told Ms. Jordan that you thought  
4 Ms. Bell didn't even do an investigation; is  
5 that right?  
6 A. That's right.  
7 Q. And that she was rude to you?  
8 A. Yes, sir.  
9 Q. How was Ms. Bell rude to you?  
10 A. She just had a belligerent attitude. The only  
11 time that she spoke to me was to tell me that  
12 she had not found any cause to believe there  
13 was discrimination. And I said, well, you  
14 haven't even talked to me, so how have you --  
15 She was just real clippy and cut me off,  
16 gave me the impression she just didn't want to  
17 be bothered with me.  
18 Q. Did you have any kind of lawyer at that time?  
19 Were you consulting with any kind of lawyer  
20 at that time?  
21 A. No, sir.  
22 MR. MOZINGO: A kind of lawyer?  
23 MR. NIX: Huh?

Deposition of Lynn Hubbard

June 3, 2008

Page 206	Page 208
<p>1 MR. MOZINGO: A kind of lawyer?</p> <p>2 MR. NIX: Any kind of lawyer.</p> <p>3 MR. MOZINGO: I don't know what any</p> <p>4 kind of lawyer is. Someone</p> <p>5 claiming to be?</p> <p>6 MR. NIX: No.</p> <p>7 Q. Have you spoken about this matter in any way</p> <p>8 with Kathy Thompson?</p> <p>9 A. No, sir.</p> <p>10 Q. Have y'all exchanged e-mails or anything like</p> <p>11 that --</p> <p>12 A. With Kathy Thompson --</p> <p>13 Q. -- about this matter?</p> <p>14 A. No.</p> <p>15 Q. How about Courtney Tarver? Have you spoken</p> <p>16 with Courtney Tarver about this matter?</p> <p>17 A. I have not.</p> <p>18 Q. Have not exchanged any correspondence or</p> <p>19 communications or e-mails, right?</p> <p>20 A. No, sir.</p> <p>21 Q. How about June Lynn?</p> <p>22 A. No, sir.</p> <p>23 Q. Before you filed your EEOC complaint, did you</p>	<p>1 A. I don't remember anybody ...</p> <p>2 Q. For example, did you ever go to -- do you know</p> <p>3 Courtney?</p> <p>4 A. Yes.</p> <p>5 Q. You've known Courtney a long time, haven't</p> <p>6 you?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you ever go to Courtney and talk to him?</p> <p>9 A. No, sir.</p> <p>10 Q. Ever sit down with Courtney and say, Courtney,</p> <p>11 I've got a problem?</p> <p>12 A. No, sir.</p> <p>13 Q. Why not?</p> <p>14 A. Because Courtney's duty, I would say, is to</p> <p>15 represent the Department. He was the person</p> <p>16 responding. I didn't think it would be an</p> <p>17 appropriate thing to do.</p> <p>18 Q. Did you ever go to Commissioner Houston and</p> <p>19 tell him, Mr. Houston, this is a problem. I'm</p> <p>20 going to have to file an EEOC complaint.</p> <p>21 A. The first time I met with him, I indicated</p> <p>22 that I was afraid that's what I would have to</p> <p>23 do.</p>
Page 207	Page 209
<p>1 tell anyone at the Department that you were</p> <p>2 going to file?</p> <p>3 A. Other than Joan?</p> <p>4 Q. Right, other than Joan. I assume y'all</p> <p>5 knew --</p> <p>6 A. I don't remember telling anybody that.</p> <p>7 Q. Tell me again when you first realized the</p> <p>8 specification did not -- for this job did not</p> <p>9 contain the substitution provision.</p> <p>10 A. When the announcement came out.</p> <p>11 Q. So when the announcement came out or</p> <p>12 afterwards, did you talk with anybody at</p> <p>13 ADEM -- excuse me, at the Alabama Department</p> <p>14 of Mental Health and Mental Retardation, did</p> <p>15 you talk to anyone there about this?</p> <p>16 A. I'm sorry. You brought up the announcement</p> <p>17 and now I've lost --</p> <p>18 Q. After the announcement.</p> <p>19 A. After the announcement came out, did I talk to</p> <p>20 anybody?</p> <p>21 Q. Anybody at the Department.</p> <p>22 A. About?</p> <p>23 Q. About this matter.</p>	<p>1 Q. When was the first time again?</p> <p>2 A. Sometime before May of '05.</p> <p>3 Q. Did you tell anybody else at the Department of</p> <p>4 Mental Health and Mental Retardation after you</p> <p>5 knew, you know, that you might be filing a</p> <p>6 claim with EEOC that you were going to do</p> <p>7 that?</p> <p>8 A. No, sir.</p> <p>9 Q. Did anyone ever tell you at EEOC that Lula</p> <p>10 Bell had a hard time making decisions or had a</p> <p>11 hard time making correct decisions?</p> <p>12 A. Veneda Jordan, her supervisor, said several</p> <p>13 uncomplimentary things about her.</p> <p>14 Q. Like what?</p> <p>15 A. She said she'd had problems with her in the</p> <p>16 past. I think at one point she said they had</p> <p>17 taken her out of her section or something and</p> <p>18 that she had had complaints before about how</p> <p>19 she talked to people. I can't remember</p> <p>20 everything. I just know that she didn't have</p> <p>21 good things to say about her.</p> <p>22 Q. Since you filed your complaint with the EEOC</p> <p>23 up until today, Ms. Hubbard, how have you been</p>

Page 210	Page 212
<p>1 treated at the Alabama Department of Mental</p> <p>2 Health?</p> <p>3 A. Fine.</p> <p>4 MR. NIX: Let me talk to my brother.</p> <p>5 (Brief recess was taken.)</p> <p>6 Q. Ms. Hubbard, other than the people we've</p> <p>7 talked about at the EEOC that you've described</p> <p>8 conversations with for me, did you talk to</p> <p>9 anybody else at EEOC that we have not</p> <p>10 discussed?</p> <p>11 A. I talked to Sherry Guenster at EEOC.</p> <p>12 Q. Did you go up and meet with her?</p> <p>13 A. No, sir.</p> <p>14 Q. When did you talk to her? Do you recall?</p> <p>15 A. No, sir, but it probably would have been soon</p> <p>16 before she was about to do a ruling because I</p> <p>17 had called to see if she had started her</p> <p>18 investigation or if she had finished her</p> <p>19 investigation, and she said that she was close</p> <p>20 to ruling on it.</p> <p>21 Q. Is that the full extent of the conversation?</p> <p>22 A. Basically. That's all I can recall.</p> <p>23 Q. Is Ms. Guenster white or black?</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF ALABAMA:</p> <p>3 MONTGOMERY COUNTY:</p> <p>4 I, Lisa J. Green, CCR, Registered</p> <p>5 Professional Reporter, and Commissioner for the State</p> <p>6 of Alabama at Large, do hereby certify that I reported</p> <p>7 the deposition of:</p> <p>8 LYNN HUBBARD</p> <p>9 who was first duly sworn by me to speak the truth, the</p> <p>10 whole truth and nothing but the truth, in the matter</p> <p>11 of:</p> <p>12 JOAN FAULK OWENS and KAREN LYNN HUBBARD,</p> <p>13 Plaintiffs,</p> <p>14 Vs.</p> <p>15 STATE OF ALABAMA DEPT. OF MENTAL HEALTH</p> <p>16 AND MENTAL RETARDATION, et al.,</p> <p>17 Defendants.</p> <p>18 In The U.S. District Court</p> <p>19 For the Middle District of Alabama</p> <p>20 Northern Division</p> <p>21 Case Number 2:07-CV-650</p> <p>22 on Tuesday, June 3, 2008.</p> <p>23 The foregoing 211 computer printed pages</p>
Page 211	Page 213
<p>1 A. I have never met her in person.</p> <p>2 Q. And have you spoken with Anne Evans about</p> <p>3 this?</p> <p>4 A. She knows that I have a case, but not about</p> <p>5 the case, no.</p> <p>6 Q. Do you know whether Joan Owens has spoken with</p> <p>7 Anne Evans about it?</p> <p>8 A. Not that I know of. You would have to ask</p> <p>9 Joan.</p> <p>10 Q. How do you know Anne Evans knows you have a</p> <p>11 case?</p> <p>12 A. Because there have been times that I've</p> <p>13 mentioned, just in an off-setting thing. And</p> <p>14 I think -- I would assume that she knew</p> <p>15 anyway, working with the Commissioner like she</p> <p>16 did.</p> <p>17 MR. NIX: That's all.</p> <p>18 (Deposition concluded at 5:00 p.m.)</p> <p>19</p> <p>20 *****</p> <p>21 FURTHER DEPONENT SAITH NOT</p> <p>22 *****</p> <p>23</p>	<p>1 contain a true and correct transcript of the</p> <p>2 examination of said witness by counsel for the parties</p> <p>3 set out herein. The reading and signing of same is</p> <p>4 hereby waived.</p> <p>5 I further certify that I am neither of kin</p> <p>6 nor of counsel to the parties to said cause nor in any</p> <p>7 manner interested in the results thereof.</p> <p>8 This 9th day of June 2008.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

**DEPOSITION OF HENRY E. ERVIN**

**June 10, 2008**

**Pages 1 through 318**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: haislipragan@charter.net**

**Plaintiffs'  
Exhibit 108**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

vs.

CIVIL ACTION NO.  
2:07-cv-650-WHA

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF HENRY E. ERVIN, taken  
pursuant to stipulation and agreement before Lyn  
Daugherty, ACCR #66, Certified Court Reporter and  
Commissioner for the State of Alabama at Large, in  
the Law Offices of Nix, Holtsford, Gilliland,  
Higgins & Hitson, 4001 Carmichael Road, Suite 300,  
Montgomery, Alabama, on Tuesday, June 10th, 2008,  
commencing at approximately 10:30 a.m.

\* \* \* \* \*



Deposition of Henry E. Ervin

June 10, 2008

Page 2

Page 4

1 APPEARANCES  
 2 FOR THE PLAINTIFFS:  
 3 Mr. J. Flynn Mozingo  
 4 MELTON, ESPY & WILLIAMS  
 5 Attorneys at Law  
 6 255 Dexter Avenue  
 7 Montgomery, Alabama 36104

8 FOR THE DEFENDANTS:  
 9 Mr. H.E. Nix, Jr.  
 10 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON  
 11 Attorneys at Law  
 12 4001 Carmichael Road, Suite 300  
 13 Montgomery, Alabama 36106

14 Mr. Courtney W. Tarver  
 15 Deputy Attorney General and General Counsel  
 16 Bureau of Legal Services  
 17 ADHM/MR  
 18 RSA Union Building  
 19 100 North Union Street  
 20 Montgomery, Alabama 36130

21 ALSO PRESENT: Ms. Joan Owens  
 22 Ms. Lynn Hubbard  
 23 Mr. David Bennett

\*\*\*\*\*

## EXAMINATION INDEX

HENRY E. ERVIN  
 BY MR. MOZINGO ..... 6

(Index continued on next page)

1 56 Employee performance appraisal for 269  
 2 period 1/1/2005 to 1/1/2006

3 57 Employee performance appraisals for 279  
 4 Marilyn Benson

5 58 Employee performance appraisals for Lynn 285  
 6 Hubbard

7 59 Employee performance appraisals for Joan 294  
 8 Owens

\*\*\*\*\*

Page 3

Page 5

## EXHIBIT INDEX

## PAGE

## Plaintiff

43 Notice of deposition 10

44 Defendant Henry Ervin's responses to 12  
 45 plaintiffs' first consolidated discovery

46 E-mail dated November 7, 2007 from Lynn 19  
 47 Hubbard to David Bennett and Henry Ervin

48 Job specifications from Departmental 21  
 49 Assistant Personnel Manager

50 Job announcement for Departmental 46  
 51 Assistant Personnel Manager

52 Employee performance preappraisal for 118  
 53 Marilyn Benson for the period 3/4/2006  
 54 to 9/3/2006

55 Memo dated February 3, 2005 to Jackie 238  
 56 Graham from Henry Ervin

57 Memo dated June 14, 2005 to John Houston 239  
 58 from Henry Ervin

59 Request to fill exempt position on 244  
 60 staffing plan

61 Draft job announcement for Departmental 249  
 62 Assistant Personnel Manager

63 Log entries for central office - 254  
 64 administration

65 List of where exempt job announcements 257  
 66 are sent

67 Invoice from The Tuscaloosa News 259

(Index continued on next page)

## STIPULATIONS

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of HENRY E. ERVIN is taken pursuant to the Federal Rules of Civil Procedure and that said deposition may be taken before Lyn Daugherty, Certified Shorthand Reporter, and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in evidence or used for any other purpose by either party provided for by the Statute.

It is further stipulated and agreed by and between counsel representing the parties in this case that the filing of said deposition is hereby waived and may be introduced at the trial of this case or used in any other manner by either party hereto provided for by the Statute regardless of the waiving of the filing of the same.

It is further stipulated and agreed by and

Deposition of Henry E. Ervin

June 10, 2008

Page 6	Page 8
<p>1 between the parties hereto and the witness that the</p> <p>2 signature of the witness to this deposition is</p> <p>3 hereby not waived.</p> <p>4 *****</p> <p>5 HENRY E. ERVIN</p> <p>6 The witness, after having first been duly sworn</p> <p>7 to speak the truth, the whole truth and nothing but</p> <p>8 the truth testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. MOZINGO:</p> <p>11 Q. Would you please state your full name for</p> <p>12 the record?</p> <p>13 A. Henry Earl Ervin.</p> <p>14 Q. Mr. Ervin, we are here to take your</p> <p>15 deposition today in the lawsuit styled Joan</p> <p>16 Faulk Owens and Karen Lynn Hubbard versus</p> <p>17 the State of Alabama Department of Mental</p> <p>18 Health and Mental Retardation, et al. You</p> <p>19 understand that you are a defendant in that</p> <p>20 case; correct?</p> <p>21 A. Yes, sir. I understand.</p> <p>22 Q. Have you ever given a deposition before?</p> <p>23 A. Yes.</p>	<p>1 MR. MOZINGO: Uh-huh (positive</p> <p>2 response).</p> <p>3 MR. NIX: You're probably going to</p> <p>4 ask some questions that are</p> <p>5 very similar to the</p> <p>6 interrogatories we objected</p> <p>7 to. I don't know whether you</p> <p>8 will or not. But if you do, I</p> <p>9 would like to talk to you</p> <p>10 about it. One of the main</p> <p>11 things is this: You asked</p> <p>12 some questions about cases and</p> <p>13 stuff like that and we</p> <p>14 objected to that. And I think</p> <p>15 I wrote you a couple of</p> <p>16 letters about I'd be willing</p> <p>17 to sit down with you anytime</p> <p>18 you want to to talk about</p> <p>19 that. But this is my</p> <p>20 position, that any production</p> <p>21 relative to other cases of any</p> <p>22 kind would have to be subject</p> <p>23 to the rules, similarity of</p>
Page 7	Page 9
<p>1 Q. I'm going to ask you a little bit later</p> <p>2 about the depositions that you've given,</p> <p>3 but I want to make sure since you've given</p> <p>4 one before that you understand if in the</p> <p>5 course of the deposition if you need to</p> <p>6 take a break that you can let me know;</p> <p>7 okay?</p> <p>8 A. I understand.</p> <p>9 Q. And I may need to finish a question I'm</p> <p>10 asking, but otherwise let me know if you</p> <p>11 need to take a break. In addition, if you</p> <p>12 do not understand a question that I ask,</p> <p>13 please let me know and I'll be glad to</p> <p>14 reask the question; okay?</p> <p>15 A. Okay.</p> <p>16 Q. So unless you say something, I'm going to</p> <p>17 assume you understand my question.</p> <p>18 MR. NIX: Flynn, let me mention</p> <p>19 one thing to you.</p> <p>20 MR. MOZINGO: What's that?</p> <p>21 MR. NIX: As you know, in our</p> <p>22 written discovery responses we</p> <p>23 made some objections.</p>	<p>1 the case, time. And that's</p> <p>2 probably the only two that</p> <p>3 would matter here because</p> <p>4 geography is not an issue</p> <p>5 here, I don't think, since</p> <p>6 we're talking about the state</p> <p>7 department. But similarity</p> <p>8 and a temporal -- something</p> <p>9 that's not temporally remote</p> <p>10 would be my position. So, you</p> <p>11 know, if you get to a question</p> <p>12 like that, I'll probably</p> <p>13 object and say let's talk</p> <p>14 about it.</p> <p>15 MR. MOZINGO: Like what?</p> <p>16 MR. NIX: Well, I don't know.</p> <p>17 MR. MOZINGO: Like has he been</p> <p>18 sued before?</p> <p>19 MR. NIX: Yeah. Or does he know</p> <p>20 whether the department has</p> <p>21 been sued before or have you</p> <p>22 ever -- any kind of court</p> <p>23 action, any kind of --</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 10	Page 12
<p>1 anything like that would --</p> <p>2 MR. MOZINGO: Well, we'll -- we're</p> <p>3 going to have to take a break,</p> <p>4 then, because I certainly am</p> <p>5 going to ask them.</p> <p>6 MR. NIX: Right. So why don't you</p> <p>7 do this, then. If you want</p> <p>8 to, we can -- we can discuss</p> <p>9 it on the record or we can</p> <p>10 discuss it at a break, however</p> <p>11 you want to do it. But I'm</p> <p>12 glad to talk with you about</p> <p>13 it; okay?</p> <p>14 MR. MOZINGO: Okay.</p> <p>15 (Plaintiffs' Exhibit 43 was marked</p> <p>16 for identification.)</p> <p>17 Q. Let me show you, Mr. Ervin, what's been</p> <p>18 marked Plaintiffs' Exhibit 43, and that is</p> <p>19 the notice for your deposition today. Have</p> <p>20 you seen that document before?</p> <p>21 A. I don't recall ever seeing this.</p> <p>22 Q. You do understand, though, you were</p> <p>23 required to come here today or asked to</p>	<p>1 A. Yes.</p> <p>2 (Plaintiffs' Exhibit 44 was marked</p> <p>3 for identification.)</p> <p>4 Q. Let me show you what I'm marking now as</p> <p>5 Plaintiffs' Exhibit 44. And that would</p> <p>6 be -- I'll represent to you that that is</p> <p>7 your response to the plaintiffs' first</p> <p>8 discovery request. Have you seen that</p> <p>9 before?</p> <p>10 A. Yes, I have.</p> <p>11 Q. In fact, if you will flip over to the very</p> <p>12 back of that document, I believe there is a</p> <p>13 verification page. Is that your signature</p> <p>14 on the verification page?</p> <p>15 A. That is my signature.</p> <p>16 Q. And did you read and review the response to</p> <p>17 the plaintiffs' first consolidated</p> <p>18 discovery prior to signing the</p> <p>19 verification?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Is your response to the plaintiffs' first</p> <p>22 consolidated discovery true and correct?</p> <p>23 A. Yes.</p>
Page 11	Page 13
<p>1 come here today to give your deposition;</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you understand that we had asked you to</p> <p>5 produce certain documents for the purpose</p> <p>6 of your deposition?</p> <p>7 MR. NIX: Well, let me just say</p> <p>8 this; okay? Subject or</p> <p>9 pursuant to our discussions.</p> <p>10 MR. MOZINGO: And I'm going to get</p> <p>11 to that. I'm coming straight</p> <p>12 to that.</p> <p>13 MR. NIX: We've either produced or</p> <p>14 objected to those items as you</p> <p>15 and I have discussed.</p> <p>16 Q. You understand that your deposition notice</p> <p>17 requests that you produce certain</p> <p>18 documents; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And your attorneys have previously produced</p> <p>21 documents in response to the defendants'</p> <p>22 first consolidated discovery directed to</p> <p>23 you. Are you aware of that?</p>	<p>1 MR. NIX: Again, Flynn, to the</p> <p>2 extent that he responded and</p> <p>3 we did not object -- some of</p> <p>4 them we objected to and</p> <p>5 nevertheless responded to.</p> <p>6 Some of them we objected to</p> <p>7 and did not respond to, which</p> <p>8 are the ones basically that</p> <p>9 I'm talking about or that I</p> <p>10 mentioned earlier.</p> <p>11 Q. I have had some discussion with your</p> <p>12 attorney this morning regarding documents</p> <p>13 that were produced, and I am unclear as to</p> <p>14 whether certain computer records or</p> <p>15 documents from your computer were produced</p> <p>16 in response to that discovery request. And</p> <p>17 I have discussed my lack of clarity with</p> <p>18 your attorney this morning. And he has</p> <p>19 shown me this morning documents that he</p> <p>20 believes were from your computer, and I</p> <p>21 want to go through those with you and to</p> <p>22 verify that these documents were, in fact,</p> <p>23 generated or obtained from your computer;</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 14

1 okay?

2 A. Yes.

3 MR. NIX: Let me just say that I  
4 think I mentioned to you  
5 earlier that these documents  
6 would have been on his  
7 computer.

8 MR. MOZINGO: You did. You did.  
9 And that's why I'm asking him  
10 now to confirm that. And,  
11 Chip, if you will let me --  
12 and I'm not going to mark what  
13 you showed me a separate  
14 exhibit. I'm just going to  
15 read it into the record.

16 MR. NIX: Sure. Now, you need to  
17 let him look at them; okay?

18 MR. MOZINGO: Sure. I'm going to  
19 hand each one to him.

20 MR. NIX: And then that e-mail, I  
21 don't know where I put that.

22 MR. MOZINGO: I have it. You left  
23 that with me.

Page 16

1 nevertheless those are the  
2 questions that were used in  
3 the interview.

4 Q. And I'm just asking, Mr. Ervin, did that  
5 document -- was that produced from your  
6 computer file?

7 A. Yes.

8 Q. Next I want to show you two documents that  
9 appear to go together and they are Bates  
10 stamped ADMH 04-00082 and ADMH 04-00083 and  
11 I'm handing those to you for the record.  
12 Were those documents retrieved from files  
13 on your computer?

14 A. Yes.

15 Q. And to save time I have two separate  
16 documents now. They may or may not go  
17 together. But I'm going to ask you to  
18 identify both of them for me at the same  
19 time. But they are ADMH 04-00084 and ADMH  
20 04-00085. Were those two documents  
21 likewise retrieved from files on your  
22 computer?

23 A. Yes.

Page 15

1 Q. Okay. The first document that we have --  
2 Your attorney has just handed me a series  
3 of documents. And the first document that  
4 we have is Bates stamped ADMH 04-00080 and  
5 ADMH 04-00081. These two appear to go  
6 together. Can you tell me whether those  
7 documents were obtained from your computer?

8 MR. NIX: Let me just state an  
9 objection to the record and  
10 say to you that I believe what  
11 I told you about that document  
12 was that it was the document  
13 that was used as questions for  
14 the interviews. And the  
15 e-mail from Mike Mathis sent  
16 him questions which may or may  
17 not have been modified in some  
18 way; okay? But those are the  
19 questions that were used in  
20 the interview; okay? So  
21 that -- I don't know whether  
22 Mr. Ervin modified what Mike  
23 Mathis sent him or not, but

Page 17

1 Q. In response to the plaintiffs' first  
2 consolidated discovery, did you personally  
3 go through files on your computer to look  
4 for documents responsive to the plaintiffs'  
5 request?

6 A. No.

7 Q. You did not?

8 A. No.

9 Q. Have you ever gone through the files on  
10 your computer to look for documents  
11 responsive to the plaintiffs' discovery  
12 request?

13 A. No.

14 Q. Do you know who went through your computer  
15 to look for documents responsive to the  
16 plaintiffs' discovery request?

17 A. No.

18 Q. Do you know if there are other documents  
19 besides those that we just identified  
20 maintained in files on your computer that  
21 would be responsive to the plaintiffs'  
22 discovery request?

23 A. No.

Page 18	Page 20
<p>1 Q. And you have not gone through your computer</p> <p>2 yourself --</p> <p>3 A. No.</p> <p>4 Q. -- to look for such documents?</p> <p>5 Do you know if the documents we just</p> <p>6 identified are all the documents on your</p> <p>7 computer that would be responsive to the</p> <p>8 plaintiffs' discovery request?</p> <p>9 MR. NIX: If you know.</p> <p>10 A. As far as I know.</p> <p>11 Q. As far as you know what?</p> <p>12 A. Those are the ones.</p> <p>13 Q. Could there be additional documents on your</p> <p>14 computer that have not been produced that</p> <p>15 are responsive to the plaintiffs' first</p> <p>16 discovery request?</p> <p>17 A. I would assume there could be, but I'm not</p> <p>18 so literate in computers that I could tell</p> <p>19 you that for certain. I just don't know.</p> <p>20 MR. MOZINGO: I think what I'll</p> <p>21 do, Chip, instead of</p> <p>22 continuing on with him</p> <p>23 regarding this matter, you and</p>	<p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Did you go and retrieve that document off</p> <p>4 your computer in responding to the</p> <p>5 plaintiffs' first discovery requests?</p> <p>6 A. No, I did not.</p> <p>7 Q. Do you know who did?</p> <p>8 A. No, I don't.</p> <p>9 MR. NIX: Flynn, let me just</p> <p>10 explain for the record. With</p> <p>11 respect to Number 45, is it --</p> <p>12 yeah -- is that I told you</p> <p>13 that I would do my best to</p> <p>14 look back through material</p> <p>15 again. This was previously</p> <p>16 produced, even though it does</p> <p>17 not have a Bates number on it,</p> <p>18 except that I gave it to you</p> <p>19 because it had the forward on</p> <p>20 it; okay? And that's --</p> <p>21 Therefore, the content of the</p> <p>22 document was previously</p> <p>23 produced, but because</p>
Page 19	Page 21
<p>1 I can just discuss that</p> <p>2 later.</p> <p>3 MR. NIX: Sure. I think I told</p> <p>4 you how we obtained various</p> <p>5 documents like that.</p> <p>6 Q. Okay. One other document, by the way --</p> <p>7 this does not have a Bates stamp number, so</p> <p>8 I am going to mark it as an exhibit.</p> <p>9 MR. MOZINGO: Do you mind, Chip,</p> <p>10 if I mark this one?</p> <p>11 MR. NIX: No. I gave you that</p> <p>12 this morning. I don't mind</p> <p>13 you marking that at all. Just</p> <p>14 so -- Well, go ahead.</p> <p>15 (Plaintiffs' Exhibit 45 was marked</p> <p>16 for identification.)</p> <p>17 Q. Let me show you what's been marked</p> <p>18 Plaintiffs' Exhibit 45. Have you ever seen</p> <p>19 that document before?</p> <p>20 A. Yes, I have.</p> <p>21 Q. That appears to be an e-mail that you</p> <p>22 received from Lynn Hubbard that you would</p> <p>23 have forwarded on to June Lynn; is that</p>	<p>1 Mr. Ervin forwarded it to</p> <p>2 Ms. Lynn, I provided that to</p> <p>3 you today, Plaintiffs' 45.</p> <p>4 (Plaintiffs' Exhibit 46 was marked</p> <p>5 for identification.)</p> <p>6 Q. Mr. Ervin, let me show you what I have</p> <p>7 marked Plaintiffs' Exhibit 46. Have you</p> <p>8 seen that document before?</p> <p>9 A. Yes, I have.</p> <p>10 Q. When is the first time you saw the</p> <p>11 document?</p> <p>12 A. Not the same exact document, but the rough</p> <p>13 draft of this was -- I was involved in</p> <p>14 producing this back in '04, late '04.</p> <p>15 Q. Do you remember the first time you saw the</p> <p>16 document that's been marked Plaintiffs'</p> <p>17 Exhibit 46?</p> <p>18 A. Not really. I would think that it would be</p> <p>19 shortly after it was actually typed.</p> <p>20 Q. Do you know when it was actually typed?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you know what year it was actually typed?</p> <p>23 A. Like I had said earlier, I was involved in</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 22	Page 24
<p>1 producing the document in terms of working</p> <p>2 on it in '04, late '04. So the date that's</p> <p>3 on it is 1/05. So to say that it was typed</p> <p>4 at that time, I would think so.</p> <p>5 Q. Do you believe, then, that this document</p> <p>6 that is Plaintiffs' Exhibit 46 would have</p> <p>7 been prepared in January 2005?</p> <p>8 A. Ask me that again.</p> <p>9 Q. Is it your testimony, then, that this</p> <p>10 document that has been marked Plaintiffs'</p> <p>11 Exhibit 46 was prepared in January 2005?</p> <p>12 MR. NIX: By prepared you mean</p> <p>13 typed?</p> <p>14 A. I was going to ask that.</p> <p>15 Q. Okay. You don't understand?</p> <p>16 A. I was going to ask if you were saying if it</p> <p>17 was typed at that time.</p> <p>18 Q. Yes, sir.</p> <p>19 A. I don't know, but that's the date that's on</p> <p>20 it.</p> <p>21 Q. Okay. And you're referring on the second</p> <p>22 page --</p> <p>23 A. Yes.</p>	<p>1 2005?</p> <p>2 A. To my knowledge?</p> <p>3 Q. Yes, sir.</p> <p>4 A. I don't recall that it has been. It might</p> <p>5 have been, but I just don't recall.</p> <p>6 Q. But you believe it might have been?</p> <p>7 A. No. I said it might have been, but I just</p> <p>8 don't recall.</p> <p>9 Q. So you have no knowledge of it being</p> <p>10 revised --</p> <p>11 A. Right --</p> <p>12 Q. -- since January --</p> <p>13 MR. NIX: No. Excuse me. Let me</p> <p>14 object to the form. He said</p> <p>15 he did not recall whether or</p> <p>16 not it had been, not that he</p> <p>17 did not have knowledge that it</p> <p>18 was revised.</p> <p>19 Q. Do you have any knowledge, Mr. Ervin, that</p> <p>20 Plaintiffs' Exhibit 46 has been revised</p> <p>21 since January 2005?</p> <p>22 MR. NIX: Asked and answered.</p> <p>23 Objection.</p>
Page 23	Page 25
<p>1 Q. -- at the bottom right-hand corner where it</p> <p>2 says 1 backslash 05?</p> <p>3 A. That's correct.</p> <p>4 Q. And what would that date represent to you,</p> <p>5 Mr. Ervin?</p> <p>6 A. The date that it was typed.</p> <p>7 Q. Mr. Ervin, what do you call this document?</p> <p>8 Does it have its own name? How do you</p> <p>9 refer to it?</p> <p>10 A. Job specification.</p> <p>11 Q. Job specification. Is Plaintiffs' Exhibit</p> <p>12 46 the job specification for Departmental</p> <p>13 Assistant Personnel Manager?</p> <p>14 A. That's what's indicated on it.</p> <p>15 Q. Do you believe Plaintiffs' Exhibit 46 to be</p> <p>16 the job specification for Departmental</p> <p>17 Assistant Personnel Manager?</p> <p>18 A. Yes.</p> <p>19 Q. And you believe Plaintiffs' Exhibit 46 was</p> <p>20 prepared in January 2005?</p> <p>21 A. Was typed in January '05.</p> <p>22 Q. To your knowledge, has Plaintiffs' Exhibit</p> <p>23 46 been revised or modified since January</p>	<p>1 Q. You can answer.</p> <p>2 A. I don't have any knowledge that it was</p> <p>3 revised, if that's what you're asking.</p> <p>4 Q. That's what I'm asking.</p> <p>5 A. Okay.</p> <p>6 MR. NIX: What was the rest of</p> <p>7 your answer a minute ago? You</p> <p>8 don't recall?</p> <p>9 A. I don't recall if it was revised.</p> <p>10 MR. NIX: Right. That's the</p> <p>11 answer. I mean, you got the</p> <p>12 answer a minute ago.</p> <p>13 MR. MOZINGO: Wait. Please.</p> <p>14 Actually, I think I was</p> <p>15 getting the answer until you</p> <p>16 started --</p> <p>17 MR. NIX: No. You had the answer</p> <p>18 earlier and you asked the</p> <p>19 question again.</p> <p>20 MR. MOZINGO: No. I reasked the</p> <p>21 question based upon your</p> <p>22 objection to the form. I</p> <p>23 reasked it and I changed the</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 26

1 form of the question.  
 2 MR. NIX: Well, he asked -- he  
 3 answered your question  
 4 earlier. He answered the  
 5 question and I objected to the  
 6 form.  
 7 MR. MOZINGO: That's right.  
 8 MR. NIX: I don't know whether I  
 9 objected to the ultimate  
 10 answer to the question. But  
 11 irrespective of that, go  
 12 ahead.  
 13 MR. MOZINGO: Well, you objected  
 14 to the form of the question,  
 15 so I reasked the question in a  
 16 different form. And I'm going  
 17 to reask it now in the same  
 18 form in which I asked it.  
 19 Q. Do you have any knowledge, Mr. Ervin, that  
 20 Plaintiffs' Exhibit 46 has been revised or  
 21 modified since January 2005?  
 22 A. None that I can recall.  
 23 Q. If it was revised -- Strike that.

Page 27

1 Have you revised Plaintiffs' Exhibit 46  
 2 since January 2005?  
 3 A. I don't recall having done that.  
 4 Q. If it was revised after January 2005, do  
 5 you know where the revision -- revised  
 6 document would be?  
 7 A. No, I don't.  
 8 Q. I'll represent to you that Plaintiffs'  
 9 Exhibit 46 is the only job specification  
 10 sheet for the Departmental Assistant  
 11 Personnel Manager that I have received.  
 12 I'll represent that to you. Do you know of  
 13 any other job specification for  
 14 Departmental Assistant Personnel Manager  
 15 other than the one dated January 2005?  
 16 MR. NIX: Object to the form.  
 17 A. I have no additional knowledge regarding  
 18 that.  
 19 Q. If Plaintiffs' Exhibit 46 had been revised  
 20 since January 2005, would you have a copy  
 21 of that revision?  
 22 A. I would think that a copy would be in the  
 23 personnel office at some point in time.

Page 28

1 Q. Okay. And where would the copy be kept in  
 2 the personnel office?  
 3 A. In the job specification booklet.  
 4 Q. And have you reviewed the job specification  
 5 booklet at any time since this lawsuit  
 6 against you was filed?  
 7 A. No.  
 8 Q. Did you review the job specification  
 9 booklet in response to the plaintiffs'  
 10 first consolidated discovery directed to  
 11 you?  
 12 A. I've looked at the job specifications, but  
 13 not the whole booklet.  
 14 Q. What job specifications have you looked at?  
 15 A. At this particular one.  
 16 Q. The one that's been marked Plaintiffs'  
 17 Exhibit 46?  
 18 A. Yes. That's correct.  
 19 Q. Have you seen a specification for  
 20 Departmental Assistant Personnel Manager  
 21 other than the one dated January 2005?  
 22 A. Not that I can recall.  
 23 Q. Who typed Plaintiffs' Exhibit 46?

Page 29

1 A. I'm not sure.  
 2 Q. Was Plaintiffs' Exhibit 46 typed at your  
 3 direction?  
 4 A. Yes.  
 5 Q. And you're not sure who you directed to  
 6 type it?  
 7 A. Well, we have several people in the  
 8 office. Rebecca Taylor was one person who  
 9 could have typed it. Marilyn Benson could  
 10 have typed it.  
 11 Q. Do you believe Marilyn Benson, in fact,  
 12 typed Plaintiffs' Exhibit 46?  
 13 A. I just told you two people could have typed  
 14 it.  
 15 Q. You did. And I asked who you believe typed  
 16 it.  
 17 A. I don't know.  
 18 Q. Did you ask Marilyn Benson to type it?  
 19 A. If she typed it, I obviously asked her.  
 20 But I don't know that she typed it. If  
 21 Becky typed it, I would have asked her.  
 22 But I don't know that she typed it.  
 23 Q. Do you recall asking Becky to type it?

Page 30	Page 32
1 A. I don't recall asking either one of them to	1 A. Yes.
2 type it.	2 Q. What was Marilyn Benson's classification in
3 Q. What is Rebecca Taylor's job in the	3 late 2004?
4 department?	4 A. Personnel Specialist III.
5 A. Currently?	5 Q. What is the difference in the
6 Q. Currently.	6 classification between a Personnel
7 A. She's a Personnel Specialist II.	7 Specialist and a Personnel Assistant?
8 Q. What was her job in late 2004?	8 MR. NIX: In terms of job
9 A. If I recall correctly, I believe she was a	9 function?
10 Personnel Assistant II.	10 A. Are you saying job functions?
11 Q. Okay. Did she hold that same job	11 Q. Well, I'm asking in the classification.
12 throughout 2005?	12 A. One is merit. One is exempt.
13 A. I'm not sure. I know she was promoted, but	13 Q. Any other difference?
14 I'm just -- I'm not sure when that occurred.	14 A. Responsibilities are different in terms of
15 Q. What was she promoted to?	15 the Personnel Specialist III has more
16 A. Personnel Specialist II.	16 responsibility than a Personnel Assistant.
17 Q. Which is the same job she holds today?	17 Q. Are the qualifications different?
18 A. That's correct.	18 A. Yeah.
19 Q. What was Rebecca Taylor's duties as a	19 Q. Is the pay range different?
20 Personnel Assistant II back in late 2004?	20 A. Yes.
21 MR. NIX: Did he say she was	21 Q. Are there any other differences that you
22 promoted in 2004 to Personnel	22 know of?
23 II?	23 A. I'm not that familiar with the merit system
Page 31	Page 33
1 MR. MOZINGO: He said he didn't	1 Personnel Assistant, so I'm quite sure
2 know when she was promoted.	2 there are some differences, but I can't
3 MR. NIX: Okay. Let me object to	3 specifically tell you what they are.
4 the form of the question.	4 Q. Does a Personnel Assistant -- in layman's
5 A. I don't remember specifically all of the	5 terms, are they equivalent to a secretary?
6 things that she did, but I know that she	6 A. Equivalent to a secretary? I would not
7 was responsible for certain merit system	7 think so. I mean, they do some secretarial
8 positions in terms of requesting registers	8 kinds of duties -- clerical duties. Let's
9 and certain exempt classes in terms of	9 put it that way. But not -- I think
10 typing job specs. I think she sat in on	10 they're more technically involved than a
11 some interviews at that time, did several	11 secretary would be.
12 things.	12 Q. In the classification system, which is
13 Q. Is there a class -- a job classification	13 classified higher, a Personnel Specialist
14 known as Personnel Assistant?	14 class or a Personnel Assistant class?
15 A. Merit system.	15 A. It depends on which one we're talking
16 Q. Okay. But is there a job classification	16 about. If you're talking about a Personnel
17 known as Personnel Assistant?	17 Assistant I versus a Personnel Specialist
18 A. I and II and III. Personnel Assistant I,	18 I, I think they are paid basically the same
19 II and III.	19 pay range.
20 Q. Correct. Is that a classification of jobs?	20 Q. What about a Personnel Specialist III
21 A. Yes.	21 compared to a Personnel Assistant II?
22 Q. Is there a classification of jobs known as	22 A. The Personnel Specialist III is higher than
23 Personnel Specialist?	23 a Personnel Assistant II.

Page 34

1 Q. And does a Personnel Specialist III have  
2 greater responsibilities?  
3 A. I would think so.  
4 Q. And they would be in a higher pay range --  
5 A. Yes.  
6 Q. -- as well? And they --  
7 MR. NIX: I'm sorry, Flynn. Which  
8 two are you comparing now?  
9 MR. MOZINGO: Personnel Specialist  
10 III and Personnel Assistant  
11 II.  
12 MR. NIX: Okay.  
13 Q. And the Personnel Specialist III would have  
14 greater responsibilities than a Personnel  
15 Assistant II; correct?  
16 A. Yes.  
17 Q. You testified that either Becky Taylor or  
18 Rebecca Taylor or Marilyn Benson could have  
19 typed Plaintiffs' Exhibit 46. Can you tell  
20 me, given the difference in the job  
21 classifications you just testified to, why  
22 you would ask Marilyn Benson to type  
23 Plaintiffs' Exhibit 46?

Page 35

1 MR. NIX: He hasn't testified that  
2 he asked her to, so I object  
3 to the form of the question.  
4 But he can answer the  
5 question.  
6 A. I don't believe I told you that she typed  
7 it.  
8 Q. Well, you told me it's possible she typed  
9 it. Why would it -- How could it have been  
10 possible that Marilyn Benson typed it?  
11 A. Because it was possible that I could have  
12 asked her to type it.  
13 Q. And why would you have asked her, assuming  
14 you did?  
15 A. Because she knew how to do it and -- either  
16 one of them would have known how to do it.  
17 I would have asked either one of them.  
18 Q. She knew how to type it?  
19 A. Yeah.  
20 Q. Does Joan Owens know how to type?  
21 A. Yeah.  
22 Q. Does Lynn Hubbard know how to type?  
23 A. Yeah.

Page 36

1 Q. Did you ask Joan Owens or Lynn Hubbard to  
2 prepare or to type what's been marked  
3 Plaintiffs' Exhibit 46?  
4 A. No, I did not.  
5 Q. Why not?  
6 A. I felt that the person that I wanted to do  
7 it was the person who had been doing most  
8 of them.  
9 Q. And would that have been Marilyn Benson?  
10 A. And Becky Taylor.  
11 Q. Could have been either/or?  
12 A. Could have been either/or.  
13 Q. But you don't know which one you asked?  
14 A. I don't know which one I asked.  
15 Q. A job specification sheet such as what's  
16 been marked Plaintiffs' Exhibit 46, how is  
17 it used in announcing a job opening for  
18 that position?  
19 A. You look at the kinds of work involved, the  
20 knowledge, skills and ability, and then you  
21 transpose that in layman's terms to the job  
22 announcement.  
23 Q. Okay. So in the case of Departmental

Page 37

1 Assistant Personnel Manager, Plaintiffs'  
2 Exhibit 46 would have served as the basis  
3 for the preparation of the job  
4 announcement?  
5 MR. NIX: I object to the form.  
6 A. It could have.  
7 Q. Well, did it?  
8 MR. NIX: Object to the form.  
9 A. I'm almost certain that parts of that was  
10 on the announcement.  
11 Q. Can you vary -- Can the announcement vary  
12 from the job specification?  
13 A. Yes.  
14 Q. It can?  
15 A. Yes.  
16 Q. In what way?  
17 A. Well, there are some things on the  
18 announcement that are not on here that  
19 would be part of the announcement that's  
20 not on the job spec. Preferences, the  
21 experience factor. I'm not real certain  
22 that that's not on there, but that could be  
23 another factor.

Deposition of Henry E. Ervin

June 10, 2008

Page 38

1 Q. Anything else?

2 A. That's about it.

3 Q. So preferences and experience can vary

4 between the job announcement and the job

5 specification; is that correct?

6 A. The preference can. I take it back on the

7 qualifications and the experience because

8 it's -- it's on the job spec and it must be

9 on the announcement too.

10 Q. So the preference can vary; is that

11 correct?

12 A. Well, you can have your preference in terms

13 of putting that on the announcement, yes.

14 You don't have a preference on the spec

15 itself.

16 Q. Okay. Can the experience vary?

17 A. Not from the job spec itself.

18 Q. Other than preferences, can anything else

19 vary between the job announcement and the

20 job specification?

21 A. I don't know if you want to vary too much,

22 but I can't say for certain that you're

23 going to -- I just don't recall looking at

Page 39

1 an announcement and looking at a job spec

2 and seeing that it's a major difference in

3 terms of variations.

4 Q. Okay. I'm not sure I understand your

5 answer. And I'm not even sure if it's --

6 A. I don't --

7 Q. -- responsible to ask, so let me ask it

8 again. Other than preferences, can

9 anything else vary between the job

10 announcement and the job specification?

11 A. First of all, I don't do these on a regular

12 basis; okay? I don't develop the

13 announcements on a regular basis. I review

14 them for content. And I don't necessarily

15 go back and try to compare and see is it

16 meeting everything that's on the job spec

17 as opposed to what's on the announcement.

18 I generally look over it and that's it.

19 Q. Is it your testimony that other than

20 preferences the job specification is

21 allowed to vary from the job announcement?

22 A. I didn't say that.

23 Q. Well, I'm asking is that your testimony?

Page 40

1 A. I said -- I think I said specifically that

2 preferences was the thing that I remember

3 as being added to the announcement that

4 might not be on the job specification.

5 Q. And you did. And I wrote that down. And

6 I'm trying to find out other than

7 preferences can anything else vary between

8 the job announcement and the job

9 specification?

10 MR. NIX: And let me object to the

11 form because it's been asked

12 and he answered it.

13 MR. MOZINGO: No, he hasn't.

14 MR. NIX: Yeah, he did.

15 MR. MOZINGO: He hasn't.

16 MR. NIX: He did.

17 MR. MOZINGO: He hasn't answered

18 can anything else. That is

19 the question and that's

20 why I'm asking it.

21 MR. NIX: He's only answered it

22 three or four times, Flynn.

23 He answered it. He answered

Page 41

1 the question.

2 MR. MOZINGO: Well, I'm going to

3 reask it.

4 MR. NIX: Let me do this.

5 Q. Other than preferences, can anything else

6 vary between the job announcement and the

7 job specification?

8 MR. NIX: Flynn, let me say

9 something real quick because I

10 do still object to the form.

11 But when the witness has

12 answered the exact question

13 that you've already asked and

14 you ask it again, then --

15 which is something that

16 happened a lot, I think, in

17 Otha Dillihay's deposition.

18 And I think it's unfair to the

19 witness to continuously ask

20 the same question over and

21 over when he's given you an

22 answer. And at some point in

23 time I would -- I would just



Deposition of Henry E. Ervin

June 10, 2008

Page 42

1 appreciate your not doing it  
 2 for one thing. If you ask a  
 3 question and he gives an  
 4 answer, then you've got your  
 5 answer. But I would sort of  
 6 appreciate your not doing it.  
 7 I would ask you not to repeat  
 8 the same questions over and  
 9 over. But if it continues to  
 10 happen, I mean, I may have to  
 11 instruct him not to answer.  
 12 MR. MOZINGO: Well, you go right  
 13 ahead, Chip. I asked anything  
 14 other than preferences, and I  
 15 don't have an answer to that  
 16 question yet. And that's what  
 17 I'm asking.  
 18 MR. NIX: Yes, you have an  
 19 answer.  
 20 MR. MOZINGO: Then what is it?  
 21 What's the answer? I haven't  
 22 heard him say anything other  
 23 than preferences.

Page 43

1 MR. NIX: He told you that he did  
 2 not type them, that he only --  
 3 MR. MOZINGO: That is not an  
 4 answer.  
 5 MR. NIX: It is an answer. He  
 6 said he --  
 7 MR. MOZINGO: That is not an  
 8 answer whether anything other  
 9 than preferences. I didn't  
 10 ask him if he typed it. I  
 11 didn't ask him that. I didn't  
 12 ask him if he compared it. I  
 13 just said other than  
 14 preferences is anything else  
 15 allowed to vary.  
 16 MR. NIX: He gave you an answer  
 17 when he said I don't type  
 18 them, I don't read them except  
 19 generally and --  
 20 MR. MOZINGO: You're telling me  
 21 that's an answer to that  
 22 question?  
 23 MR. NIX: Absolutely.

Page 44

1 MR. MOZINGO: I disagree. I  
 2 totally disagree.  
 3 MR. NIX: That's number two today  
 4 you disagree on.  
 5 MR. MOZINGO: Then we'll just make  
 6 a list, then, because I  
 7 totally disagree with that.  
 8 Emphatically disagree with  
 9 that. Now, I'm going to reask  
 10 it again. And I think it's a  
 11 very simple question. I'm not  
 12 asking him -- We've already  
 13 discussed who typed it or who  
 14 didn't type it. My question  
 15 is, are they allowed to vary.  
 16 Other than preferences.  
 17 MR. NIX: And he's answered the  
 18 question.  
 19 MR. MOZINGO: He didn't answer  
 20 that question.  
 21 MR. NIX: Yeah, he did.  
 22 MR. MOZINGO: Well, if you want to  
 23 instruct him --

Page 45

1 MR. NIX: Ask it one more time, if  
 2 you don't mind, and then I  
 3 will allow him to answer it  
 4 again. Go ahead.  
 5 Q. Other than preferences is the job  
 6 specification -- Strike that.  
 7 Other than preferences is the job  
 8 announcement -- Strike it. I'm trying to  
 9 get it exactly right.  
 10 MR. NIX: She can read it back.  
 11 MR. MOZINGO: I'm trying to get it  
 12 exactly like I want it. That  
 13 way you and I won't be  
 14 debating.  
 15 Q. Other than preferences, can the job  
 16 announcement vary from the job  
 17 specification?  
 18 MR. NIX: Object to the form.  
 19 Asked and answered. Henry, go  
 20 ahead. Answer it again.  
 21 A. Other than preferences, I'm quite sure  
 22 there's some word changes that could be  
 23 substituted for one word versus another one

Deposition of Henry E. Ervin

June 10, 2008

Page 46

1 or a phrase that could be substituted from  
 2 one phrase versus another one. So, yeah,  
 3 it could vary from that perspective.  
 4 Content, I'm not real certain that you're  
 5 going to make that many changes  
 6 content-wise that are going to vary and  
 7 make the job something that it's not.  
 8 Q. Well, can the definition -- I tell you  
 9 what. Before I ask the question, let me  
 10 get the announcement out. That way we can  
 11 compare apples to apples. How about that?  
 12 A. That's fine.  
 13 (Plaintiffs' Exhibit 47 was marked  
 14 for identification.)  
 15 Q. Let me show you what I'm marking  
 16 Plaintiffs' Exhibit 47. There you are.  
 17 Have you seen that document before?  
 18 A. Yes.  
 19 Q. And for the record I'll represent to you  
 20 that this is the job announcement that went  
 21 out for the position known as Departmental  
 22 Assistant Personnel Manager; is that  
 23 correct?

Page 47

1 MR. NIX: Let me see it, please.  
 2 Q. The question was is that the  
 3 announcement --  
 4 A. Yes.  
 5 Q. -- that went out for the Departmental  
 6 Assistant Personnel Manager?  
 7 A. Yes.  
 8 Q. And we see the announcement date on this  
 9 document is September 15th, 2005; is that  
 10 correct?  
 11 A. That's correct.  
 12 Q. And then on the second page the deadline  
 13 for submitting applications is September  
 14 30th, 2005?  
 15 A. That's correct.  
 16 Q. Is that correct?  
 17 Okay. We see at the top there is a  
 18 paragraph entitled qualifications; correct?  
 19 A. That's correct.  
 20 Q. At the top of Plaintiffs' Exhibit 47, that  
 21 is?  
 22 A. Yes.  
 23 Q. And we see on page 2 of Plaintiffs' Exhibit

Page 48

1 46 that there is a paragraph entitled  
 2 qualifications; correct?  
 3 A. Yes.  
 4 Q. And it's your testimony, if I'm not  
 5 mistaken, that those two paragraphs can  
 6 differ as to preference?  
 7 MR. NIX: I object to the form.  
 8 That's not what he said.  
 9 You're misquoting him.  
 10 A. I said preference can be added to the job  
 11 announcement.  
 12 Q. You did say that; is that correct?  
 13 A. That's correct.  
 14 Q. Other than adding a preference, can the  
 15 qualifications vary between the job  
 16 specification and the job announcement?  
 17 MR. NIX: Object to the form.  
 18 That's been asked and  
 19 answered.  
 20 A. The qualifications should be the same.  
 21 Q. They should be the same?  
 22 A. Yes.  
 23 Q. As far as knowledge, skills and ability.

Page 49

1 Okay. If you'll look on page 2 of  
 2 Plaintiffs' Exhibit 46, the job  
 3 specification. Do you see where it says  
 4 knowledge, skills and abilities?  
 5 A. Sure.  
 6 Q. And then on the second page of Plaintiffs'  
 7 Exhibit 47 is a paragraph entitled required  
 8 knowledge, skills and abilities. Do you  
 9 see that?  
 10 A. Yes.  
 11 Q. Are those -- Let me ask it this way: Are  
 12 those two paragraphs talking about the same  
 13 thing?  
 14 MR. NIX: What do you mean same  
 15 thing? Same subject matter?  
 16 Q. The required knowledge, skills and  
 17 abilities on Plaintiffs' Exhibit 47, is  
 18 that the same as knowledge, skills and  
 19 ability on Plaintiffs' Exhibit 46?  
 20 MR. NIX: Are you asking him  
 21 generally as to subject matter  
 22 or specifically as to  
 23 verbiage?



Deposition of Henry E. Ervin

June 10, 2008

Page 50

1 MR. MOZINGO: I'm asking him  
2 generally.

3 A. Generally, yes.

4 Q. Can the knowledge, skills and abilities,  
5 then, on the job specification differ in  
6 any way from the required knowledge, skills  
7 and abilities on the job notice?

8 MR. NIX: Object to the form.

9 Asked and answered.

10 A. Can they differ --

11 MR. NIX: Let me ask you this,  
12 Flynn. Are you asking him to  
13 compare Exhibit 46 you've  
14 given him and the Exhibit 47  
15 you've given him in that  
16 regard? Is that what you're  
17 doing? Or are you asking him  
18 a general question about  
19 whether or not the knowledge,  
20 skills and abilities set forth  
21 in the final specification and  
22 the knowledge, skills and  
23 abilities set forth in the

Page 52

1 Q. I'm sorry. Mr. Ervin. Thank you very much  
2 for correcting me. I'm sorry about that.  
3 And if I do that again in your deposition,  
4 please correct me. That is a bad habit  
5 that I have. It's no offense to you. But  
6 I have a bad habit of calling people by a  
7 name that's not theirs when I get in the  
8 midst of a deposition. So that is just one  
9 of my --

10 MR. NIX: We all do it.

11 Q. -- foibles. So if I call you Mr. Dillihay  
12 or any other name, please feel to correct  
13 me.

14 A. Well, be careful about what name you call  
15 me, now.

16 Q. Right. That's a very appropriate point.

17 A. Okay.

18 Q. Thank you. But if I call you Mr. Dillihay  
19 or any other individual's name, please  
20 correct me, because it is not intentional.

21 A. I understand. And I will.

22 Q. And I do that from time to time.

23 A. Okay.

Page 51

1 notice can vary? Which are  
2 you asking him?

3 MR. MOZINGO: I believe I just  
4 asked him whether they can  
5 vary. Between the two can  
6 they vary.

7 MR. NIX: So you're not asking him  
8 about these two specific  
9 documents? You're asking him  
10 a general question? Is that  
11 correct?

12 MR. MOZINGO: I think the question  
13 is can they vary. Very  
14 simple.

15 MR. NIX: Well, I think he -- I  
16 mean, can you just say for us,  
17 please, whether you're  
18 speaking generally or whether  
19 you're speaking about these  
20 two specific documents, 46 and  
21 47?

22 Q. Mr. Dillihay --

23 A. Ervin.

Page 53

1 Q. Can you add additional required knowledge,  
2 skills and abilities to a job announcement  
3 that are not contained in the job  
4 specification?

5 A. Yes.

6 Q. You can?

7 A. Yes.

8 MR. NIX: Let me ask you this. I  
9 still want to know whether  
10 you're talking generally.  
11 You're talking generally,  
12 aren't you? Not these two  
13 documents?

14 MR. MOZINGO: I'm talking  
15 generally.

16 MR. NIX: Good.

17 Q. And the answer is yes; is that correct?

18 A. Yes. If you're going to send out a job  
19 specification as the announcement, no, you  
20 wouldn't have to make any changes on it at  
21 all. You're trying to market this  
22 position, so you're going to do a job  
23 announcement so your language is going to

Page 54	Page 56
<p>1 be different. Your sentence structure is</p> <p>2 going to be different, the whole process.</p> <p>3 But you're still going to be getting the</p> <p>4 basics from right here on the job</p> <p>5 specification.</p> <p>6 Q. Okay. I appreciate that, but I want to</p> <p>7 make sure I understand. In general a job</p> <p>8 announcement can have additional knowledge,</p> <p>9 skills and abilities listed that are not</p> <p>10 contained in the job specification; is that</p> <p>11 correct?</p> <p>12 A. As far as I remember. And like I said, I</p> <p>13 don't do these things, so as a result I</p> <p>14 don't have to review them. I don't know</p> <p>15 exactly what's on them. But anything</p> <p>16 that's drastically different, then, of</p> <p>17 course, that shouldn't be on the</p> <p>18 announcement if it's drastically different</p> <p>19 from the job spec.</p> <p>20 Q. Okay. Well, then we get into semantics</p> <p>21 drastically.</p> <p>22 A. Exactly.</p> <p>23 Q. But I'm trying to avoid semantics. That's</p>	<p>1 answer he gave you before.</p> <p>2 And I would respectfully</p> <p>3 request, Flynn, that you ask</p> <p>4 the court reporter to read the</p> <p>5 question and his answer back.</p> <p>6 MR. MOZINGO: I'm going to tell</p> <p>7 him my understanding and let</p> <p>8 him tell me if I have the</p> <p>9 wrong understanding; okay?</p> <p>10 Q. Mr. Ervin, based on your testimony this is</p> <p>11 what I understand. And you correct me if</p> <p>12 I'm wrong and tell me why I'm wrong. But I</p> <p>13 understand based upon your testimony that</p> <p>14 additional knowledge, skills and abilities</p> <p>15 can be contained in the job announcement</p> <p>16 that are not in the job specification?</p> <p>17 MR. NIX: Object to the form.</p> <p>18 Q. That's my understanding. Is that correct?</p> <p>19 MR. NIX: Object to the form.</p> <p>20 A. I think my answer would still be the same.</p> <p>21 Structurally in doing the job announcement</p> <p>22 language-wise, sentence structure it will</p> <p>23 be different and it can be different.</p>
Page 55	Page 57
<p>1 why I'm trying to keep the question very</p> <p>2 simple and ask you. And I think you</p> <p>3 answered it. And so we'll be perfectly</p> <p>4 clear that you answered it and I know you</p> <p>5 answered it, let me do it again.</p> <p>6 MR. NIX: Don't ask it again.</p> <p>7 Don't ask him the same</p> <p>8 question again. Please don't</p> <p>9 ask him the same question</p> <p>10 again. He has answered your</p> <p>11 question.</p> <p>12 MR. MOZINGO: And I want to make</p> <p>13 sure that I understood it</p> <p>14 because -- and I'm going to</p> <p>15 tell him what I understand and</p> <p>16 give him a chance to correct</p> <p>17 it.</p> <p>18 MR. NIX: I would ask that you get</p> <p>19 the court reporter to read it</p> <p>20 back instead of repeating the</p> <p>21 question. It's just not fair</p> <p>22 to the witness to go through</p> <p>23 that and him give you the same</p>	<p>1 Those are the things that I see as being</p> <p>2 different. So if it varies, it varies.</p> <p>3 Q. Well, and I appreciate how sometimes in</p> <p>4 typing a notice some words can change. I'm</p> <p>5 not holding you to the words. I haven't</p> <p>6 asked you if most of the words would be</p> <p>7 exactly the same. But I think what causes</p> <p>8 me confusion is this knowledge, skills and</p> <p>9 abilities has like the ability to interpret</p> <p>10 state and federal rules and regulations;</p> <p>11 okay? And you've listed a whole bunch of</p> <p>12 abilities in --</p> <p>13 MR. NIX: Which one are you</p> <p>14 talking about?</p> <p>15 Q. I'm about to tell him.</p> <p>16 In Plaintiffs' Exhibit 46, the job</p> <p>17 specification, you've listed a whole bunch</p> <p>18 of abilities. And what I'm wondering is if</p> <p>19 it came time to do the job announcement</p> <p>20 such as has been done with Plaintiffs'</p> <p>21 Exhibit 47, is it permissible to add</p> <p>22 another ability, such as let's say ability</p> <p>23 to take shorthand or ability to speed</p>

Page 58	Page 60
<p>1 read? I'm just trying to figure out can</p> <p>2 you add abilities and skills in a job</p> <p>3 announcement that may not be contained in</p> <p>4 the job specification. And I think that's</p> <p>5 a very simple question.</p> <p>6 MR. NIX: You've asked more than</p> <p>7 one question in that question</p> <p>8 and I object to the form of it</p> <p>9 due to the fact that there's</p> <p>10 more than one question in it.</p> <p>11 You've asked him one specific</p> <p>12 question about 46 and you've</p> <p>13 asked him a general question.</p> <p>14 So which one do you want to</p> <p>15 ask him?</p> <p>16 MR. MOZINGO: I've asked him can</p> <p>17 the abilities change in a job</p> <p>18 classification and I used this</p> <p>19 as an example.</p> <p>20 MR. NIX: And you used what as an</p> <p>21 example?</p> <p>22 MR. MOZINGO: I used these as an</p> <p>23 example of abilities that are</p>	<p>1 employees, job applicants, and so forth and</p> <p>2 so on. You might want to expand that to</p> <p>3 say governmental officials or whatever.</p> <p>4 Sure, you can change it from that</p> <p>5 perspective. You're not drastically making</p> <p>6 a difference in it.</p> <p>7 Q. What about -- Let's look at examples of</p> <p>8 work performed that are listed on</p> <p>9 Plaintiffs' Exhibit 46. Is that the same</p> <p>10 thing as kind of work that's listed on</p> <p>11 Plaintiffs' Exhibit 47?</p> <p>12 A. Exactly. Examples. Examples. It says</p> <p>13 examples of work performed in the spec.</p> <p>14 Q. That's correct. And I'm asking is that the</p> <p>15 same thing as kind of work that's listed on</p> <p>16 Plaintiffs' Exhibit 47?</p> <p>17 A. The kind of work, you can expand that to</p> <p>18 have it from the standpoint of marketing</p> <p>19 this position. You're not just going to</p> <p>20 put the little bullets -- the one-shot</p> <p>21 bullets on it. You're going to expand it.</p> <p>22 You're going to expand those sentences to</p> <p>23 include what you're actually looking for.</p>
Page 59	Page 61
<p>1 listed.</p> <p>2 MR. NIX: When you say these, for</p> <p>3 the record --</p> <p>4 MR. MOZINGO: Plaintiffs' Exhibit</p> <p>5 46.</p> <p>6 MR. NIX: And let me just -- Never</p> <p>7 mind. That's fine.</p> <p>8 Q. That's all I want to know, Mr. Ervin. I'm</p> <p>9 not trying to trick you. I just want to</p> <p>10 know can you add abilities.</p> <p>11 A. As I've said before, how you structure the</p> <p>12 announcement can vary from what you've put</p> <p>13 on -- what you have on the specification.</p> <p>14 It can vary.</p> <p>15 Q. And I understand that and I want to make</p> <p>16 sure that I understand that ability is an</p> <p>17 example of what can vary. Can abilities</p> <p>18 vary?</p> <p>19 MR. NIX: Object to the form.</p> <p>20 A. It depends on how you have arranged it to</p> <p>21 say that of what you are looking for. An</p> <p>22 ability to meet and work effectively with</p> <p>23 supervisors, associates, department</p>	<p>1 MR. NIX: Can we take a break?</p> <p>2 We've been going an hour. I'd</p> <p>3 like to take a break.</p> <p>4 MR. MOZINGO: Sure. We can take a</p> <p>5 break.</p> <p>6 (Brief recess was taken.)</p> <p>7 Q. Mr. Dillihay, you obtained a Bachelor of</p> <p>8 Science degree from Alabama -- I did it</p> <p>9 again. I caught myself that time.</p> <p>10 Mr. Ervin. It was your look that helped</p> <p>11 me. Thank you.</p> <p>12 A. I tried to give it to you.</p> <p>13 Q. Mr. Ervin, you obtained your -- a Bachelor</p> <p>14 of Science degree from Alabama State</p> <p>15 University in 1971; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And your major was what?</p> <p>18 A. Education, history and sociology.</p> <p>19 Q. Did you have a major in all three or --</p> <p>20 A. No. Minored in social work, sociology.</p> <p>21 Q. Was your primary major history?</p> <p>22 A. Yeah.</p> <p>23 Q. And did you have a secondary major in</p>

Page 62	Page 64
<p>1 education, or was that a minor?</p> <p>2 A. It's in education.</p> <p>3 Q. Oh, okay. Is it in the school of</p> <p>4 education?</p> <p>5 A. Yes.</p> <p>6 Q. Did your studies emphasize any particular</p> <p>7 point of history?</p> <p>8 A. Fairly general. American History, World</p> <p>9 History, African-American History, European</p> <p>10 History, you know, the whole gamut.</p> <p>11 Q. You attended graduate school at Nova</p> <p>12 University in Ft. Lauderdale, Florida; is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. But you did not obtain a master's degree;</p> <p>16 is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Why did you not obtain your master's</p> <p>19 degree?</p> <p>20 A. We were going through a union organizing</p> <p>21 process. The program was designed for the</p> <p>22 practicing administrator. And so my boss</p> <p>23 and I both were enrolled and we got</p>	<p>1 town?</p> <p>2 A. Tuscaloosa.</p> <p>3 Q. Tuscaloosa. I thought so.</p> <p>4 Okay. And you did not graduate from</p> <p>5 Stillman; is that correct?</p> <p>6 A. Did not graduate from Stillman.</p> <p>7 Q. Why did you leave Stillman?</p> <p>8 A. My grades were not that great and I wanted</p> <p>9 to move on. The draft board was kind of</p> <p>10 after me and I eventually got drafted and</p> <p>11 went to Vietnam, so ...</p> <p>12 Q. Is Vietnam -- Is that what you were doing,</p> <p>13 serving in Vietnam between the time you</p> <p>14 attended Stillman and attended Alabama</p> <p>15 State?</p> <p>16 A. Yes.</p> <p>17 Q. And what branch of the service were you in?</p> <p>18 A. Army.</p> <p>19 Q. And what was your final rank?</p> <p>20 A. E-5, specialist E-5.</p> <p>21 Q. And did you receive an honorable discharge?</p> <p>22 A. Yes, I did.</p> <p>23 Q. And what did you do in the Army in Vietnam?</p>
Page 63	Page 65
<p>1 sidetracked with the union and we both did</p> <p>2 not pass our comprehensives.</p> <p>3 Q. And if you don't pass the comprehensive,</p> <p>4 you don't get the degree?</p> <p>5 A. You don't get the degree. You have to</p> <p>6 retake it.</p> <p>7 Q. And did you ever attempt to retake it?</p> <p>8 A. No.</p> <p>9 Q. And so you do not have a master's degree;</p> <p>10 is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Have you attended any other colleges or</p> <p>13 universities other than Alabama State and</p> <p>14 Nova?</p> <p>15 A. I attended Stillman College.</p> <p>16 Q. When did you attend Stillman?</p> <p>17 A. When?</p> <p>18 Q. Yes, sir.</p> <p>19 A. 1963, '64.</p> <p>20 Q. That would have been before you went to</p> <p>21 Alabama State?</p> <p>22 A. Before I went to Alabama State.</p> <p>23 Q. Okay. And Stillman is located in what</p>	<p>1 A. I was in an infantry outfit. Worked in</p> <p>2 personnel and finance six months. The</p> <p>3 other time I was an infantryman setting up</p> <p>4 claymore mines.</p> <p>5 Q. Were you involved in combat?</p> <p>6 A. Yeah.</p> <p>7 Q. You were actually shot at?</p> <p>8 A. Yeah.</p> <p>9 MR. MOZINGO: Off the record.</p> <p>10 (Off-the-record discussion.)</p> <p>11 Q. Did you begin your studies at Alabama State</p> <p>12 immediately upon returning from Vietnam?</p> <p>13 A. I got back from Vietnam in October of '67.</p> <p>14 I went to -- started Alabama State in</p> <p>15 January of '68.</p> <p>16 Q. Where did you grow up, Mr. Ervin?</p> <p>17 A. Linden, Alabama.</p> <p>18 Q. Very familiar with it. I grew up in</p> <p>19 Marion.</p> <p>20 A. I guess you would be.</p> <p>21 Q. Okay. Did you begin your studies at Nova</p> <p>22 immediately upon leaving Alabama State?</p> <p>23 A. No.</p>



Page 66	Page 68
<p>1 Q. What did you do in between?</p> <p>2 A. I moved to Columbus, Ohio, where I became</p> <p>3 employed as an employment specialist with</p> <p>4 the Ohio Bureau of Employment Service. And</p> <p>5 I left that position and went to Ohio</p> <p>6 Medical Indemnity, which is BlueShield for</p> <p>7 the state of Ohio.</p> <p>8 Q. And you did that, again, in between</p> <p>9 attending Alabama State and Nova; is that</p> <p>10 correct?</p> <p>11 A. Yeah.</p> <p>12 Q. Why did you leave -- Did you leave Ohio to</p> <p>13 go straight down to Florida for school?</p> <p>14 A. No. I got married and moved to Florida.</p> <p>15 Q. Did you work in Florida while you were</p> <p>16 living down there?</p> <p>17 A. Yes.</p> <p>18 Q. What did you do in Florida?</p> <p>19 A. I was director of personnel and support</p> <p>20 services for Palm Beach County Community</p> <p>21 Mental Health Center.</p> <p>22 Q. Was that where you were working while you</p> <p>23 were attending Nova?</p>	<p>1 Q. Was Ohio State University Hospital JCAHO</p> <p>2 accredited?</p> <p>3 A. Yes.</p> <p>4 Q. Is JCAHO accreditation a very important and</p> <p>5 serious accreditation for a hospital?</p> <p>6 A. Yes.</p> <p>7 Q. In fact, some Alabama Department of Mental</p> <p>8 Health facilities are also JCAHO</p> <p>9 accredited, aren't they?</p> <p>10 A. That's correct.</p> <p>11 Q. Does the Alabama Department of Mental</p> <p>12 Health take JCAHO accreditation very</p> <p>13 seriously?</p> <p>14 A. Yes.</p> <p>15 Q. Is it very important to the Alabama</p> <p>16 Department of Mental Health to pass or</p> <p>17 obtain JCAHO accreditation?</p> <p>18 A. I would think so, yes.</p> <p>19 Q. What happens if you don't?</p> <p>20 A. I'm not real certain that you lose any</p> <p>21 third-party payments or anything like</p> <p>22 that. But I think you -- We haven't had</p> <p>23 that to happen where we actually lost. But</p>
Page 67	Page 69
<p>1 A. Uh-huh (positive response). Yes.</p> <p>2 Q. Where did you go after Palm Beach?</p> <p>3 A. Back to Ohio.</p> <p>4 Q. What did you do when you were back in Ohio?</p> <p>5 A. I was the associate director of hospital</p> <p>6 personnel for the Ohio State University</p> <p>7 Hospital and College of Medicine.</p> <p>8 Q. And so you were actually working with the</p> <p>9 Ohio State University Hospital?</p> <p>10 A. Hospitals and College of Medicine.</p> <p>11 Q. And you were working as associate director</p> <p>12 of personnel; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Is that kind of similar to what personnel</p> <p>15 employees do at the State of Alabama as far</p> <p>16 as handling employee personnel matters,</p> <p>17 hiring, firing, benefits, things of that</p> <p>18 nature?</p> <p>19 A. That's correct.</p> <p>20 Q. Did you work inside the hospital?</p> <p>21 A. Inside their human resource department.</p> <p>22 Q. The Ohio State University Hospital?</p> <p>23 A. Yes.</p>	<p>1 I think some privileges might have been</p> <p>2 suspended or something like that. But I</p> <p>3 don't think we've actually lost</p> <p>4 accreditation.</p> <p>5 Q. Do you understand that if you lose JCAHO</p> <p>6 accreditation then you could also</p> <p>7 potentially lose third-party payments?</p> <p>8 A. That was my understanding some years ago.</p> <p>9 I don't know whether that's changed since</p> <p>10 I'm not in the hospital environment now.</p> <p>11 Q. It's just my understanding, too, and I just</p> <p>12 wanted to see if we had the same</p> <p>13 understanding. Third-party payments such</p> <p>14 as what, Medicaid, Medicare, things of that</p> <p>15 nature?</p> <p>16 A. Yeah. That's what I understand.</p> <p>17 Q. And it's my understanding for mental health</p> <p>18 facilities that's a very important source</p> <p>19 of third-party funding; is that correct?</p> <p>20 A. It's my understanding, too, yeah.</p> <p>21 Q. Now, you went straight from Ohio State to</p> <p>22 the Alabama Department of Mental Health; is</p> <p>23 that correct?</p>

Page 70	Page 72
<p>1 A. I left Ohio State and moved -- came back to</p> <p>2 Alabama to the Department of Mental</p> <p>3 Health. That's correct.</p> <p>4 Q. Why did you do that?</p> <p>5 A. I had applied for a position as personnel</p> <p>6 director. Came down for the interview.</p> <p>7 Q. And who hired you? Do you recall?</p> <p>8 A. I wasn't hired for that position.</p> <p>9 Q. What position were you hired for?</p> <p>10 A. Eventually I was hired for the assistant</p> <p>11 personnel director's position.</p> <p>12 Q. The assistant personnel director's position</p> <p>13 in the central office?</p> <p>14 A. Yes.</p> <p>15 Q. And when I say central office, I want to</p> <p>16 make sure you and I understand the same</p> <p>17 thing. When I say central office, I mean</p> <p>18 the personnel office located in the Alabama</p> <p>19 Department of Mental Health building where</p> <p>20 the commissioner works.</p> <p>21 A. Yes.</p> <p>22 Q. Where the commissioner has his office too.</p> <p>23 A. That's correct.</p>	<p>1 A. Yes.</p> <p>2 Q. What's the difference between Bryce and</p> <p>3 Partlow? Could you educate me on that?</p> <p>4 Having lived in Alabama, I've heard about</p> <p>5 them all my life, but I don't know the</p> <p>6 difference.</p> <p>7 A. One takes care of mentally ill</p> <p>8 individuals. The other one takes care of</p> <p>9 mentally retarded individuals.</p> <p>10 Q. Which does what?</p> <p>11 A. Partlow is the developmental disabilities</p> <p>12 facility which takes care of the mentally</p> <p>13 retarded.</p> <p>14 Q. And does Partlow have its own human</p> <p>15 resource office?</p> <p>16 A. They have a personnel office, human</p> <p>17 resource office, yeah.</p> <p>18 Q. And those two words, human resource or</p> <p>19 personnel office, are interchangeable;</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know how many people work in the</p> <p>23 Partlow office; the Partlow human resource</p>
Page 71	Page 73
<p>1 Q. Because my understanding -- and you correct</p> <p>2 me if I'm wrong, but my understanding is is</p> <p>3 that you have personnel offices inside</p> <p>4 mental -- certain mental health facilities</p> <p>5 across the state of Alabama; correct?</p> <p>6 A. They have personnel offices in each</p> <p>7 facility.</p> <p>8 Q. Such as Bryce Hospital. Is that a major</p> <p>9 mental health facility?</p> <p>10 A. That is.</p> <p>11 Q. And does Bryce have its own personnel</p> <p>12 office?</p> <p>13 A. They have a personnel office, yes.</p> <p>14 Q. Do you know how many people work in that</p> <p>15 office?</p> <p>16 A. Not right off. I would think more than 10,</p> <p>17 I guess. Around 10 maybe.</p> <p>18 Q. More than 10 work inside the personnel</p> <p>19 office at Bryce?</p> <p>20 A. Yeah. Well, that includes payroll, too,</p> <p>21 though.</p> <p>22 Q. And Partlow, is that facility operated by</p> <p>23 the Alabama Department of Mental Health?</p>	<p>1 office, that is?</p> <p>2 A. About three.</p> <p>3 Q. Are there any other facilities either owned</p> <p>4 or operated by the Alabama Department of</p> <p>5 Mental Health in Tuscaloosa County besides</p> <p>6 Bryce and Partlow?</p> <p>7 A. Yes.</p> <p>8 Q. And let me say for the record Bryce and</p> <p>9 Partlow are located in Tuscaloosa County;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. What other mental health facilities are</p> <p>13 there in Tuscaloosa County?</p> <p>14 A. Taylor Harden.</p> <p>15 Q. What is Taylor Harden?</p> <p>16 A. It's a forensic facility.</p> <p>17 Q. What does that mean, forensic facility?</p> <p>18 A. For individuals who are there by reason --</p> <p>19 what do you call it? Reason of insanity?</p> <p>20 Guilty by reason of insanity.</p> <p>21 Q. Is that --</p> <p>22 A. It's an evaluation process that -- I guess</p> <p>23 where people are evaluated at that point to</p>



Page 74

1 determine if they should stand trial or can  
 2 stand trial.  
 3 Q. And is Taylor Harden affiliated or  
 4 associated or does it work with or have --  
 5 and I'm sorry to ask it in so many ways.  
 6 But does it have some kind of connection  
 7 with the Alabama Department of Corrections?  
 8 A. If it does, I'm not real certain what it  
 9 is.  
 10 Q. Well, is it utilized by the Department of  
 11 Corrections to send inmates there who are  
 12 suffering from mental illness?  
 13 A. I think it's utilized by the court system.  
 14 Q. Okay. But are most of the patients at  
 15 Taylor Harden, are they inmates, correction  
 16 inmates?  
 17 A. They're patients, but -- that's about the  
 18 best I can tell you.  
 19 Q. All right. Thank you.  
 20 A. Yeah.  
 21 Q. So Bryce, Partlow, Taylor Harden. Any  
 22 other mental health facilities? I'm  
 23 sorry. Before you tell me that, let me ask

Page 75

1 you this. Does Taylor Harden have a human  
 2 resource or personnel office?  
 3 A. Yes.  
 4 Q. Do you know how many people work in that  
 5 office?  
 6 A. Two.  
 7 Q. Any other facilities besides Bryce, Partlow  
 8 and Taylor Harden located in Tuscaloosa  
 9 County?  
 10 A. Alice Kidd Nursing Home.  
 11 Q. Alice Kidd, K-I-D-D?  
 12 A. Yeah.  
 13 Q. Okay.  
 14 A. And the Mary Starke Harper geriatric  
 15 facility -- psychiatric/geriatric facility.  
 16 Q. Or geri/psych?  
 17 A. One of the two.  
 18 Q. Any others?  
 19 A. That's it in Tuscaloosa.  
 20 Q. Now, Alice Kidd you said is a nursing home;  
 21 is that correct?  
 22 A. Yeah.  
 23 Q. Is it a nursing home for the mentally ill

Page 76

1 or mentally retarded?  
 2 A. The mentally ill or geriatric patients,  
 3 yeah.  
 4 Q. And that facility is owned and operated by  
 5 the Alabama Department of Mental Health?  
 6 A. Yeah.  
 7 Q. Does that facility have its own personnel  
 8 office?  
 9 A. No.  
 10 Q. Mary Starke Harbor --  
 11 A. Harper.  
 12 Q. Thank you. H-A-R-P-E-R?  
 13 A. Yes.  
 14 Q. And that is a geri/psych facility or  
 15 geriatric slash psychiatric facility?  
 16 A. Yes.  
 17 Q. And it, too, is owned and operated by the  
 18 Alabama Department of Mental Health?  
 19 A. Yes.  
 20 Q. Does it have its own human resource or  
 21 personnel office?  
 22 A. No.  
 23 Q. Who handles human resource matters for

Page 77

1 Alice Kidd?  
 2 A. Bryce Hospital.  
 3 Q. And that's the one that you said had 10  
 4 individuals working in their human resource  
 5 department?  
 6 A. Yes.  
 7 Q. Who handles the personnel matters for Mary  
 8 Starke Harper?  
 9 A. Bryce.  
 10 Q. But Bryce does not handle the personnel  
 11 matters for Taylor Harden or Partlow?  
 12 A. No.  
 13 Q. Taylor Harden and Partlow have their own  
 14 personnel offices that handle their own  
 15 personnel matters; correct?  
 16 A. Yes.  
 17 Q. Now, every one of these mental health  
 18 facilities in Tuscaloosa County that you've  
 19 told me about, they have their own  
 20 administration; is that correct?  
 21 A. Yes.  
 22 Q. Does any facility share administration?  
 23 A. Well, I don't know what the relationship

Deposition of Henry E. Ervin

June 10, 2008

Page 78	Page 80
<p>1 would be between Harper, Kidd and Bryce, 2 but I'm quite sure a lot of shared 3 services -- at least at one time I know 4 they did exist and I would think that they 5 still exist. And I don't know exactly what 6 those services are. 7 Q. Do you know if those services, however, 8 include administration, such as management? 9 A. Each one has a facility director, so -- but 10 what part of management is shared, I don't 11 know. I can't tell you that. 12 Q. Okay. But you do know, then, that each 13 facility has its own director? 14 A. Yes. 15 Q. Do you know how many Department of Mental 16 Health employees there are in Tuscaloosa 17 County? 18 A. In Tuscaloosa County? 19 Q. Working in Tuscaloosa County, that is. Not 20 residing, but working in Tuscaloosa County. 21 A. It's more than a thousand. That's the best 22 I can guess for you. 23 Q. At least over a thousand, then?</p>	<p>1 Q. Are the greatest concentration of 2 Department of Mental Health employees 3 working in Tuscaloosa County? 4 A. Yes. 5 Q. Do you have any other counties in the state 6 of Alabama that have a similar 7 concentration of Department of Mental 8 Health employees working there? 9 A. Well, you have other facilities. You have 10 two more facilities -- three more 11 facilities that we didn't talk about. 12 Q. And where are they? 13 A. Greil Hospital in Montgomery. 14 Q. And so the employees at Greil Hospital 15 would be part of the -- you told me 2 or 16 300 mental health employees working in 17 Montgomery County? 18 A. Yes. 19 Q. So we have Greil. And who else? 20 A. Mt. Vernon. That's Mobile County. 21 Q. Right. I've heard of Mt. Vernon. 22 A. Searcy Hospital. 23 Q. Does Mt. Vernon have its own human resource</p>
Page 79	Page 81
<p>1 A. Yeah. 2 Q. Is it possible there are 2,000 or more 3 working in Tuscaloosa County? 4 A. It's only 2,900 in the whole department, so 5 I can't say that for certain that it's -- 6 Q. Okay. So at least, then, one-third of all 7 Department of Mental Health employees are 8 working in Tuscaloosa County? 9 A. That's very possible. 10 Q. Well, if there are only 2,900 in the whole 11 department and you have at least a thousand 12 in Tuscaloosa County, then that's 13 mathematically approximately one-third; 14 right? 15 A. Okay. 16 Q. Would you agree? 17 A. Yes. 18 Q. Do you know how many mental health 19 employees work in -- Strike that. 20 Do you know how many Department of 21 Mental Health employees work in Montgomery 22 County? 23 A. 350 to 400 possibly.</p>	<p>1 office? 2 A. Yes. 3 Q. Do you know how many people are in that 4 office? 5 A. Four or five I would think. That's what I 6 remember anyway. 7 Q. What other -- You told me Greil, Mt. 8 Vernon, and you said there's a third one? 9 A. North Alabama Regional. 10 Q. Where is that facility? 11 A. It's in Decatur. 12 Q. Are those all of the Department of Mental 13 Health facilities, then? 14 A. Yes. 15 Q. Does North Alabama Regional have its own 16 personnel office? 17 A. Yes. 18 Q. How many employees work in that office? 19 A. Two. 20 Q. So is it true that by far the greatest 21 number of Department of Mental Health 22 employees work in Tuscaloosa County? 23 A. Yes.</p>

Page 82	Page 84
<p>1 Q. And the personnel office at Bryce Hospital,</p> <p>2 you told me they had 10 employees working</p> <p>3 in that office. Do they have a personnel</p> <p>4 director in that office?</p> <p>5 A. Yes. I told you I thought it was around</p> <p>6 10. I'm not real certain about the number.</p> <p>7 Q. Approximately 10?</p> <p>8 A. Yeah. Approximately 10.</p> <p>9 Q. I'm not holding you to any hard number on</p> <p>10 that.</p> <p>11 A. There's a personnel manager there.</p> <p>12 Q. What is his name?</p> <p>13 A. Jim Elliott.</p> <p>14 Q. And how long has Mr. Elliott served as</p> <p>15 personnel manager at Bryce?</p> <p>16 A. I'm not real certain. Approximately two or</p> <p>17 three years, though.</p> <p>18 Q. What did Mr. Elliott do before becoming</p> <p>19 personnel manager at Bryce?</p> <p>20 A. He was a Personnel Specialist at Bryce.</p> <p>21 Q. Do you know what level? We talked about</p> <p>22 there were different --</p> <p>23 A. He was a III.</p>	<p>1 director of human resources?</p> <p>2 A. Yes.</p> <p>3 Q. But that is not your official title;</p> <p>4 correct?</p> <p>5 A. No.</p> <p>6 Q. Correct?</p> <p>7 A. No. That's not my official title.</p> <p>8 Q. What is Mr. Elliott's official title?</p> <p>9 A. Personnel Manager III.</p> <p>10 Q. Do you know if he is called by any other</p> <p>11 name?</p> <p>12 A. Working titles vary from director of HR to</p> <p>13 director of personnel. So those are</p> <p>14 working titles only.</p> <p>15 Q. And director of human resources, is that a</p> <p>16 working title?</p> <p>17 A. Yes.</p> <p>18 Q. Can you explain to me why working titles</p> <p>19 are used if you have -- Strike it. Let me</p> <p>20 ask it this way: Personnel Manager IV,</p> <p>21 which is your title --</p> <p>22 A. Yes.</p> <p>23 Q. -- would you call that your legal title?</p>
Page 83	Page 85
<p>1 Q. Personnel Specialist III, then?</p> <p>2 A. Yes.</p> <p>3 Q. And he went from Personnel Specialist III</p> <p>4 to Personnel Manager of that department; is</p> <p>5 that correct?</p> <p>6 A. Yes.</p> <p>7 Q. How many employees work in the central</p> <p>8 office of personnel in Montgomery?</p> <p>9 A. Approximately seven.</p> <p>10 Q. And you are the head of the central</p> <p>11 personnel office in Montgomery; is that</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. How long have you served in that position?</p> <p>15 A. Since 1998.</p> <p>16 Q. Now, you have the title of Personnel</p> <p>17 Specialist -- I'm sorry. Strike that. Let</p> <p>18 me ask it this way. What is your title</p> <p>19 with the Department of Mental Health?</p> <p>20 A. Personnel Manager IV.</p> <p>21 Q. Personnel Manager IV. That is your title?</p> <p>22 A. That's correct.</p> <p>23 Q. Are you sometimes called, then, the</p>	<p>1 A. Official payroll title.</p> <p>2 Q. Okay. Thank you. Official payroll title.</p> <p>3 And I believe I learned earlier this</p> <p>4 morning that Personnel Manager IV is part</p> <p>5 of a class known as the Personnel Manager</p> <p>6 class; is that correct?</p> <p>7 A. That is a class.</p> <p>8 Q. And in that class you have a Personnel</p> <p>9 Manager I, Personnel Manager II, Personnel</p> <p>10 Manager III, Personnel Manager IV; correct?</p> <p>11 A. In the exempt system of mental health.</p> <p>12 Q. So that's true in the exempt system?</p> <p>13 A. Yes.</p> <p>14 Q. And so Mr. Elliott is in the class in which</p> <p>15 you belong, but he's a level III and you</p> <p>16 are a level IV; correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Are there any higher levels in that class?</p> <p>19 A. No.</p> <p>20 Q. You used the word exempt. Can you explain</p> <p>21 to the jury --</p> <p>22 A. The jury?</p> <p>23 Q. Well, they're not here.</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 86

1 MR. NIX: These ladies.  
 2 MR. MOZINGO: That's right. If  
 3 only I was so fortunate.  
 4 MR. NIX: I'm sorry.  
 5 MR. MOZINGO: That's all right.  
 6 Q. Can you explain -- because it is possible  
 7 your deposition could be read to a jury, so  
 8 that's why I used that word jury, not to  
 9 throw you off in any way or confuse you.  
 10 Could you explain to the jury the  
 11 difference between the exempt system and  
 12 the merit system?  
 13 A. The exempt system was established by an act  
 14 for the Department of Mental Health whereas  
 15 a certain number of classes were  
 16 established that would not have to go  
 17 through the merit system process of exams  
 18 and becoming part of a register. Whereas  
 19 the merit system you have to be tested by  
 20 getting on a register and having your name  
 21 forwarded to a certain department to be  
 22 placed in a class if you are selected for a  
 23 position. Whereas the exempt system we are

Page 87

1 basically responsible for setting up our  
 2 own interview process and system to select  
 3 individuals for those particular classes.  
 4 Q. Now, who is responsible for maintaining the  
 5 merit system?  
 6 A. State personnel.  
 7 Q. And is the Department of Mental Health  
 8 allowed to maintain its own classification  
 9 or employment system under the exempt  
 10 status?  
 11 A. Yes.  
 12 Q. Do you know --  
 13 A. But that still -- It's in conjunction with  
 14 state personnel because, you know, we have  
 15 to -- our positions have to come through  
 16 their organization. Yeah.  
 17 Q. They don't approve of your positions, do  
 18 they?  
 19 MR. NIX: I object to the form in  
 20 terms of approve of. Do you  
 21 mean like in the sense that --  
 22 Do you understand my  
 23 objection? Are you asking

Page 88

1 does the personnel department  
 2 approve the position or  
 3 approve of the positions?  
 4 Q. Well, the Department of Mental Health it's  
 5 my understanding under the exempt system is  
 6 able to establish its own classification of  
 7 positions; correct?  
 8 A. We establish particular classes in the  
 9 exempt system. State personnel has to  
 10 accept those classes in the merit system  
 11 for payroll purposes and other purposes as  
 12 it relates to the system.  
 13 Q. So they accept those classes for payroll  
 14 purposes?  
 15 A. And classification purposes.  
 16 Q. And class purposes. Well, I can understand  
 17 the payroll because I can understand --  
 18 it's my understanding the personnel  
 19 department has to manage the payroll system  
 20 for all state employees; is that correct?  
 21 A. Yes.  
 22 Q. So I can understand them having to know  
 23 about your class for payroll purposes. But

Page 89

1 you also said for class purposes. I don't  
 2 know what that means. Can you tell me what  
 3 that means?  
 4 A. Well, first of all, if we have a class  
 5 that's going to go to the merit system --  
 6 or should I say to state personnel for  
 7 inclusion in that system and if we're going  
 8 to have a salary that's going to be way out  
 9 of whack in terms of what they think it  
 10 ought to be, they're not going to approve  
 11 it. They're not going to let it go through  
 12 their system. So they have something to  
 13 say about our exempt classes.  
 14 Q. And that is making sure that the salary  
 15 range for your classes are reasonable or  
 16 acceptable to them?  
 17 A. Exactly.  
 18 Q. Other than ensuring that the salary ranges  
 19 are commensurate with the class, does state  
 20 personnel have any other involvement in the  
 21 exempt system utilized by the Department of  
 22 Mental Health?  
 23 A. Other than putting them, like I said,



Deposition of Henry E. Ervin

June 10, 2008

Page 90	Page 92
<p>1 through their system, no.</p> <p>2 Q. In other words, making a record of it in</p> <p>3 their system; correct?</p> <p>4 A. Yeah.</p> <p>5 Q. Now, when you returned to Alabama -- and</p> <p>6 that was in 1980, right, to work with the</p> <p>7 Department of Mental Health or thereabouts?</p> <p>8 A. Yes.</p> <p>9 Q. When you returned to Alabama, you got a job</p> <p>10 as assistant personnel director in the</p> <p>11 central office of personnel?</p> <p>12 A. In the central office, yes, sir. That's</p> <p>13 correct.</p> <p>14 Q. What was your payroll title at that time?</p> <p>15 A. Assistant personnel director.</p> <p>16 Q. That was a payroll title, then?</p> <p>17 A. Yes.</p> <p>18 Q. How long did you hold that position?</p> <p>19 A. From September to --</p> <p>20 Q. September 1980?</p> <p>21 A. 1980 until March, I guess, of '81.</p> <p>22 Q. What did you do in that position?</p> <p>23 A. I assisted the personnel director in the</p>	<p>1 A. I don't recall having submitted a separate</p> <p>2 application for it because the individual</p> <p>3 who was in that position had Lou Gehrig's</p> <p>4 disease and passed on. So that's when --</p> <p>5 When I was here for the director's</p> <p>6 interview, they told me that they expected</p> <p>7 that position would be coming available and</p> <p>8 they wanted to keep me in mind just in case</p> <p>9 it did. So they contacted me regarding</p> <p>10 that.</p> <p>11 Q. So you came down to Montgomery and you</p> <p>12 interviewed for the personnel director and</p> <p>13 through the course of that interview you</p> <p>14 were told they wanted to keep you in</p> <p>15 mind --</p> <p>16 A. Yes.</p> <p>17 Q. -- for a possible opening with assistant</p> <p>18 director?</p> <p>19 A. Right.</p> <p>20 Q. And so how long was it after that interview</p> <p>21 did they call you back and tell you there</p> <p>22 was an opening for assistant director?</p> <p>23 A. Two or three months.</p>
Page 91	Page 93
<p>1 day-to-day operations of the department and</p> <p>2 did specific recruiting, basically took</p> <p>3 care of the affirmative action efforts for</p> <p>4 the department.</p> <p>5 Q. Who was the personnel director that you</p> <p>6 assisted?</p> <p>7 A. Earl Reed.</p> <p>8 Q. Now, you told me earlier, if I'm not</p> <p>9 mistaken, that you applied for that job; is</p> <p>10 that correct?</p> <p>11 A. I applied for the director's job.</p> <p>12 Q. Director of the department?</p> <p>13 A. Director of the personnel department.</p> <p>14 Q. The job you have now?</p> <p>15 A. Yes.</p> <p>16 Q. But you were given the assistant personnel</p> <p>17 director's job; is that correct?</p> <p>18 A. When it became available, they contacted me</p> <p>19 and I had to come down for another</p> <p>20 interview for that position.</p> <p>21 Q. Did you submit a separate application for</p> <p>22 that position, the position of assistant</p> <p>23 personnel director?</p>	<p>1 Q. Okay. When they called you back, did they</p> <p>2 ask you to come in and do a separate</p> <p>3 interview?</p> <p>4 A. Yes.</p> <p>5 Q. So you came back and did another interview</p> <p>6 for the assistant director's job?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you know if anyone else was interviewed</p> <p>9 for that job?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if anyone else was asked to</p> <p>12 interview for that job?</p> <p>13 A. I have no idea.</p> <p>14 Q. Do you know if anyone else was</p> <p>15 considered --</p> <p>16 A. Don't know.</p> <p>17 Q. -- for the assistant job?</p> <p>18 At the time that you held the job of</p> <p>19 assistant personnel director, was there a</p> <p>20 job specification for the position?</p> <p>21 A. It was a Form 40. I remember that</p> <p>22 specifically.</p> <p>23 Q. And a Form 40 is a form that's different</p>

Page 94

1 than a job specification such as  
 2 Plaintiffs' Exhibit 46 we talked about  
 3 today; correct?  
 4 A. Right.  
 5 Q. I think I know what you're talking about,  
 6 the Form 40. We'll cover that later. But  
 7 I just want to make sure we're clear that  
 8 they are different --  
 9 A. Uh-huh (positive response).  
 10 Q. -- documents or different forms?  
 11 A. Yes.  
 12 Q. But other than a Form 40, there was no job  
 13 specification for the assistant personnel  
 14 director's position back in 1980 when you  
 15 held the position?  
 16 A. A job specification as we know it now --  
 17 Q. Yes, sir.  
 18 A. -- I don't recall ever seeing that.  
 19 Q. Do you recall ever seeing -- either when  
 20 you applied for the assistant personnel  
 21 director or held that job, do you recall  
 22 ever seeing an announcement for the  
 23 position?

Page 95

1 A. No.  
 2 Q. Do you know if an announcement ever  
 3 existed?  
 4 A. I have no idea.  
 5 Q. Do you know if a job specification sheet  
 6 ever existed for the position?  
 7 A. It was a job description. That's all I  
 8 know.  
 9 Q. And would that be the Form 40?  
 10 A. No.  
 11 Q. Do you know if that job description still  
 12 exists?  
 13 A. I haven't been able to find it.  
 14 Q. Have you looked for it?  
 15 A. Yeah.  
 16 Q. When did you look for it?  
 17 A. Oh, I've looked for it, I guess, probably a  
 18 couple of years ago.  
 19 Q. A couple of years ago, would that have been  
 20 the last time you looked for it?  
 21 A. Yeah.  
 22 Q. Did you look for it in association with the  
 23 creation of the job Marilyn Benson now

Page 96

1 holds?  
 2 A. I don't believe so. I think it was prior  
 3 to -- to that.  
 4 Q. And have you ever been able to find it?  
 5 A. No.  
 6 Q. And at what point did you become Director  
 7 of Personnel Services?  
 8 A. I believe the term was not director even  
 9 then, even though it would have been  
 10 filling that position. But they chose to  
 11 call it Personnel Manager.  
 12 Q. In other words, you had another payroll  
 13 title?  
 14 A. Yes.  
 15 Q. Do you know what level you were in -- what  
 16 level Personnel Manager you were when you  
 17 were performing the role of Director of  
 18 Personnel Services?  
 19 A. It was only one level and that was the  
 20 position that -- yeah.  
 21 Q. At that time there was only the payroll  
 22 title of Personnel Manager?  
 23 A. In central office.

Page 97

1 Q. In central office?  
 2 A. Yes.  
 3 Q. But subsequently we've learned that other  
 4 levels of payroll -- I'm sorry -- of  
 5 Personnel Manager have been created, such  
 6 as I, II --  
 7 A. I think there were Personnel Officers I, II  
 8 and III back then, but I just don't  
 9 recall. You're talking 27 to 28 years ago,  
 10 so --  
 11 Q. Yes, sir. It's been a while.  
 12 A. Yeah.  
 13 Q. Now, you left the Department of Mental  
 14 Health central office to go work in  
 15 Thomasville, Alabama; is that correct?  
 16 A. That was not the reason I left.  
 17 Q. Okay. When did you leave the central  
 18 office?  
 19 A. I left central office in April of '87.  
 20 Q. And why did you leave?  
 21 A. My mother had early stages of Alzheimer's.  
 22 I had to go take care of her.  
 23 Q. And you returned to Linden?



Page 98	Page 100
<p>1 A. Yes.</p> <p>2 Q. Did you graduate from Linden High School,</p> <p>3 by the way?</p> <p>4 A. No. I graduated from Linden Academy High</p> <p>5 School.</p> <p>6 Q. So you went home to take care of your</p> <p>7 mother at that time. What did you do for a</p> <p>8 living to support yourself, if anything?</p> <p>9 A. I had a little convenience store, little</p> <p>10 laundromat that my uncle had sold us and we</p> <p>11 did that.</p> <p>12 Q. You subsequently returned to the Alabama</p> <p>13 Department of Mental Health; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. That would have been around 1988?</p> <p>17 A. '88.</p> <p>18 Q. And what did you do upon your return to the</p> <p>19 department in 1988?</p> <p>20 A. I was a patient advocate.</p> <p>21 Q. Where?</p> <p>22 A. Thomasville Mental Health Rehab Center.</p> <p>23 Q. What is a patient advocate?</p>	<p>1 that. But he didn't start off as a</p> <p>2 Personnel Specialist I or a Personnel</p> <p>3 Assistant.</p> <p>4 Q. Right. And maybe that's overly broad.</p> <p>5 A. Yeah.</p> <p>6 Q. I think maybe what I'm asking is, though,</p> <p>7 Mr. Elliott, he was already working with</p> <p>8 the department prior to becoming the</p> <p>9 personnel director at Bryce?</p> <p>10 A. Right.</p> <p>11 Q. As personnel director at Bryce, does he</p> <p>12 answer directly to you, or does he answer</p> <p>13 to someone else?</p> <p>14 A. He answers to the facility director.</p> <p>15 Q. And so in other words, in layman's terms</p> <p>16 the facility director is his boss?</p> <p>17 A. That's correct.</p> <p>18 Q. What function or role do you serve as</p> <p>19 central office personnel as it relates to</p> <p>20 Jim Elliott's office at Bryce?</p> <p>21 A. We basically serve as the kind of conduit</p> <p>22 for anything that goes from Bryce Hospital</p> <p>23 as it relates to personnel to the</p>
Page 99	Page 101
<p>1 A. That's an individual that basically</p> <p>2 investigates complaints from clients who</p> <p>3 feel that their rights have been violated,</p> <p>4 who feel that they've been abused in some</p> <p>5 way. And it's my job to try to protect</p> <p>6 those rights of individual patients.</p> <p>7 Q. Mr. Ervin, in the Department of Mental</p> <p>8 Health when you have Personnel Manager</p> <p>9 positions such as what you hold in the</p> <p>10 central office, such as what Jim Elliott</p> <p>11 holds at Bryce, has it been your experience</p> <p>12 that most of those individuals or most of</p> <p>13 the people that hold those positions come</p> <p>14 up through the ranks of the department?</p> <p>15 A. Most of them I'm not real certain. I'd</p> <p>16 have to kind of look and think about who is</p> <p>17 out there. Jim Elliott was at a facility</p> <p>18 in Birmingham as a personnel manager at one</p> <p>19 time.</p> <p>20 Q. Did Jim Elliott come up through the ranks</p> <p>21 of the department?</p> <p>22 A. Well, I don't know whether he was hired as</p> <p>23 a Personnel Specialist II or something like</p>	<p>1 facilities -- I mean, to the State</p> <p>2 Personnel Department. We're basically</p> <p>3 responsible for being the watchdogs of our</p> <p>4 system, the exempt system, the conduit</p> <p>5 for -- transactions that come from the</p> <p>6 facility would come through us. If there</p> <p>7 are registers, they have to kind of go</p> <p>8 directly to the facilities. But anything</p> <p>9 else pretty much we are the gatekeepers for</p> <p>10 State Personnel and things going from the</p> <p>11 facility to State Personnel.</p> <p>12 Q. So your role is kind of like as a</p> <p>13 gatekeeper or support?</p> <p>14 A. Liaison, support. We provide all of that</p> <p>15 to the facilities.</p> <p>16 Q. But as far as carrying out the actual</p> <p>17 day-to-day personnel managers -- I'm</p> <p>18 sorry -- as far as carrying out the actual</p> <p>19 day-to-day matters at the facility,</p> <p>20 Mr. Elliott's office would do that?</p> <p>21 A. Yeah. You know, he like any other</p> <p>22 personnel manager would consult with us on</p> <p>23 a regular basis with certain issues that</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 102

1 they would have.  
 2 Q. Right. But he would actually carry out the  
 3 day-to-day personnel matters for Bryce  
 4 Hospital?  
 5 A. That's correct.  
 6 Q. And any facility dependent upon the  
 7 personnel office at Bryce Hospital?  
 8 A. Yes.  
 9 Q. And he would actually be the person  
 10 responsible for enforcing the Department of  
 11 Human Resources' rules and regulations as  
 12 it concerns employees or personnel matters  
 13 at Bryce Hospital?  
 14 A. Yeah. To a certain degree. If it's a step  
 15 system where it starts there and then it  
 16 might end up in central office or  
 17 whatever. So that's where it starts.  
 18 Q. And even though it might end up in central  
 19 office, Mr. Elliott himself is directly  
 20 supervised by and answerable to his  
 21 facility director there at Bryce?  
 22 A. That's correct.  
 23 Q. And what is that individual's name?

Page 103

1 A. Mr. Cutts.  
 2 Q. His full name?  
 3 A. Charles Cutts.  
 4 Q. And that kind of scenario that you and I  
 5 have just described as far as starting  
 6 there and working its way through maybe up  
 7 to central office, that would apply to the  
 8 other mental health facilities that have  
 9 human resource departments?  
 10 A. Yes.  
 11 Q. But at the other human resource facilities  
 12 with human -- I'm sorry. At the other  
 13 mental health facilities with human  
 14 resource departments, the personnel manager  
 15 there would report to and be directly  
 16 supervised through the facility director?  
 17 A. That's correct.  
 18 Q. Your position at the facility in  
 19 Thomasville, Alabama back in 1988, was that  
 20 a payroll title of mental health facility  
 21 advocate or was that a working title?  
 22 A. That was a payroll title, advocate.  
 23 Advocate I.

Page 104

1 Q. And from the advocate position, you moved  
 2 on to the director of human resources for  
 3 the Thomasville facility; correct?  
 4 A. Personnel Manager I for Thomasville Mental  
 5 Health.  
 6 Q. You moved up to the position of Personnel  
 7 Manager I?  
 8 A. That's correct.  
 9 Q. Did you have the working title at that time  
 10 of director of human resource management?  
 11 A. They called it personnel director.  
 12 Q. And that would have been your working  
 13 title?  
 14 A. Yes.  
 15 Q. And where did you go next after working at  
 16 the Thomasville facility?  
 17 A. To Montgomery central office.  
 18 Q. When did you do that?  
 19 A. '98.  
 20 Q. And did you go straight into the position  
 21 you currently hold today?  
 22 A. I applied for it. It was announced. I  
 23 applied for it.

Page 105

1 Q. Right. When you left Thomasville --  
 2 A. Yeah.  
 3 Q. -- you went straight into the position you  
 4 hold today?  
 5 A. That's correct.  
 6 Q. So you applied for the position of --  
 7 A. Personnel Manager IV.  
 8 Q. -- Personnel Manager IV at the central  
 9 office of human resources?  
 10 A. Yes.  
 11 Q. Did you have any -- Strike that. Were  
 12 there any competing applications for the  
 13 job you hold when you applied for it back  
 14 in 1998?  
 15 A. I believe there were.  
 16 Q. Do you know who any of the competing  
 17 applicants were?  
 18 A. I remember three of these applicants.  
 19 Q. And who are they?  
 20 A. Commie Carter, Ella Bell, Marilyn Benson.  
 21 Q. Did you go through an interview process?  
 22 A. Yes.  
 23 Q. And to your knowledge, were you the

Deposition of Henry E. Ervin

June 10, 2008

Page 106	Page 108
<p>1 recommended candidate chosen by the</p> <p>2 interview panel?</p> <p>3 A. Yes.</p> <p>4 Q. Was there actually an interview panel?</p> <p>5 A. Yes.</p> <p>6 Q. And a panel is composed of more than one</p> <p>7 individual that sit in on the interview?</p> <p>8 A. Yes.</p> <p>9 Q. And they make -- And they score the</p> <p>10 candidates --</p> <p>11 A. Yes.</p> <p>12 Q. -- based upon the interview; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And they combine their score and the</p> <p>15 candidate with the highest score. Is that</p> <p>16 the recommended candidate for the position?</p> <p>17 A. Sometimes.</p> <p>18 Q. You say sometimes. Can you explain that?</p> <p>19 A. It doesn't necessarily mean because a</p> <p>20 particular person has the highest score</p> <p>21 that they will be the person recommended.</p> <p>22 Q. Then how does it work, then, if they</p> <p>23 recommend someone other than the individual</p>	<p>1 time, Chip? It's 12:44. Do</p> <p>2 y'all want to take a lunch</p> <p>3 break now?</p> <p>4 MR. NIX: Whenever you want to.</p> <p>5 Q. Would you like a lunch break now?</p> <p>6 A. I would.</p> <p>7 MR. MOZINGO: Okay. Let's take a</p> <p>8 lunch break now.</p> <p>9 (Whereupon lunch recess was taken.)</p> <p>10 Q. (Continuing by Mr. Mozingo) Mr. Ervin,</p> <p>11 we're picking up with your deposition after</p> <p>12 lunch; okay?</p> <p>13 A. Okay.</p> <p>14 Q. We've all had an opportunity to eat</p> <p>15 something, and I want to pick up where I</p> <p>16 left off with you before lunch. I was</p> <p>17 asking you a little bit about yourself. Do</p> <p>18 you have any family or friends that live in</p> <p>19 Montgomery or the immediate Montgomery</p> <p>20 area? Let's go family first. Do you have</p> <p>21 any family that lives in the immediate</p> <p>22 Montgomery area?</p> <p>23 A. Yes.</p>
Page 107	Page 109
<p>1 with the highest score?</p> <p>2 A. Well, they could recommend two people or</p> <p>3 three people. And then it's left up to the</p> <p>4 acquiring manager to make that decision.</p> <p>5 It's not the panel's decision to say this</p> <p>6 person is hired. It's the appointing</p> <p>7 authority who has that final decision.</p> <p>8 Q. Can the appointing authority choose someone</p> <p>9 other than whom the panel recommends?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know when you applied for the human</p> <p>12 resource director position in central</p> <p>13 office back in 1998, do you know if you</p> <p>14 were the individual recommended by the</p> <p>15 panel?</p> <p>16 A. At least I was told that anyway.</p> <p>17 Q. So you believe you were?</p> <p>18 A. I believe I was.</p> <p>19 Q. And have you continued to work as human</p> <p>20 resource director in the central office</p> <p>21 since 1998?</p> <p>22 A. Yes.</p> <p>23 MR. MOZINGO: How are we doing on</p>	<p>1 Q. Who are they?</p> <p>2 A. My sons.</p> <p>3 Q. What are their names?</p> <p>4 A. Anthony, Aaron, Henry, Jr., Henry Ervin,</p> <p>5 Jr.</p> <p>6 Q. Anthony Aaron Ervin?</p> <p>7 A. Yeah.</p> <p>8 Q. And then Henry Ervin, Jr.</p> <p>9 A. And Adam Ervin.</p> <p>10 Q. And all three live in Montgomery?</p> <p>11 A. All three live in Montgomery.</p> <p>12 Q. Is Anthony married?</p> <p>13 A. No.</p> <p>14 Q. What does he do?</p> <p>15 A. He works for the ABC Board as a</p> <p>16 warehouseman, warehouse worker and goes to</p> <p>17 Troy.</p> <p>18 Q. What does Henry, Jr. do?</p> <p>19 A. Henry does not do anything at this point.</p> <p>20 He's been working for Work Force when they</p> <p>21 call him.</p> <p>22 Q. Is he in school anywhere?</p> <p>23 A. No.</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 110	Page 112
<p>1 Q. But he does live in Montgomery?</p> <p>2 A. Yes.</p> <p>3 Q. Did he work anywhere prior to Work Force?</p> <p>4 A. No.</p> <p>5 Q. And Adam, what does he do?</p> <p>6 A. Adam is in a correctional facility, Yazoo</p> <p>7 City.</p> <p>8 Q. Oh, he works in a correctional facility --</p> <p>9 A. No, no, no. He's confined to a</p> <p>10 correctional facility.</p> <p>11 Q. Oh, I'm sorry. In Yazoo City?</p> <p>12 A. Yes.</p> <p>13 Q. Would that be Mississippi?</p> <p>14 A. That's correct.</p> <p>15 Q. Is that a state correctional facility?</p> <p>16 A. That's a federal.</p> <p>17 Q. How long has he been there?</p> <p>18 A. Four months.</p> <p>19 Q. Was he living in Montgomery prior to going</p> <p>20 to --</p> <p>21 A. Yes.</p> <p>22 Q. -- Yazoo City?</p> <p>23 What is he serving time for?</p>	<p>1 Q. Is Aaron married?</p> <p>2 A. No.</p> <p>3 Q. Have either -- Have any of them been</p> <p>4 married?</p> <p>5 A. No. Smart fellows.</p> <p>6 Q. Are you married?</p> <p>7 A. Yes. Happily so.</p> <p>8 Q. What is your wife's name?</p> <p>9 A. Betty.</p> <p>10 Q. Betty Ervin?</p> <p>11 A. Betty Woods Ervin.</p> <p>12 Q. Where is Betty from originally?</p> <p>13 A. Holt.</p> <p>14 Q. Holt?</p> <p>15 A. (Witness nods head).</p> <p>16 Q. Is that in Alabama?</p> <p>17 A. H-O-L-T, Holt, Alabama. Right outside of</p> <p>18 Tuscaloosa. Right in Tuscaloosa really.</p> <p>19 Q. Have you been married to anyone other than</p> <p>20 Betty?</p> <p>21 A. Yes.</p> <p>22 Q. Who else have you been married to?</p> <p>23 A. Grace.</p>
Page 111	Page 113
<p>1 A. Selling substances.</p> <p>2 MR. MOZINGO: Off the record.</p> <p>3 (Off-the-record discussion.)</p> <p>4 Q. The three boys that you have listed, are</p> <p>5 they your only children?</p> <p>6 A. The four.</p> <p>7 Q. I must have missed the fourth. Who is the</p> <p>8 fourth?</p> <p>9 A. I have Aaron, Anthony, Adam, Henry, Jr.</p> <p>10 Q. I'm sorry. I wrote down Anthony Aaron</p> <p>11 Ervin thinking that was one person. So</p> <p>12 Anthony works for the ABC Board?</p> <p>13 A. And is a student at Troy.</p> <p>14 Q. What does Aaron do?</p> <p>15 A. Aaron is assistant manager at Champs.</p> <p>16 Q. Is that an athletic clothing store?</p> <p>17 A. Yes.</p> <p>18 Q. Now, you told me Anthony is not married?</p> <p>19 A. No.</p> <p>20 Q. Is Henry, Jr. married?</p> <p>21 A. No.</p> <p>22 Q. Is Adam married?</p> <p>23 A. No.</p>	<p>1 Q. What's Grace's full name -- current name?</p> <p>2 A. Williams.</p> <p>3 Q. At one time it was Grace Ervin?</p> <p>4 A. Yes.</p> <p>5 Q. When did you marry Betty?</p> <p>6 A. 19 -- I'm sorry. 2003.</p> <p>7 Q. And were you married to Grace before you</p> <p>8 married Betty?</p> <p>9 A. Yes.</p> <p>10 Q. When did you divorce Grace?</p> <p>11 A. 2001.</p> <p>12 Q. Have you been married to anyone besides</p> <p>13 Betty and Grace?</p> <p>14 A. Yes.</p> <p>15 Q. Who else?</p> <p>16 A. Grace.</p> <p>17 Q. The same Grace?</p> <p>18 A. No.</p> <p>19 Q. What is this Grace's name?</p> <p>20 A. Grace McBride.</p> <p>21 Q. That's her current name?</p> <p>22 A. That's her current name.</p> <p>23 Q. What was her full name when you were</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 114	Page 116
1 married to her?	1 A. Yes, sir.
2 A. Annie Grace Ervin.	2 Q. Where did you live before then?
3 Q. When did you divorce Annie Grace?	3 A. Court Street.
4 A. 1994.	4 Q. What do you consider to be your primary
5 Q. Any other spouses?	5 residence?
6 A. No.	6 A. 1600 Wakefield Drive.
7 Q. So you've been married three times?	7 Q. In Tuscaloosa?
8 A. Currently. I guess if you include the	8 A. Uh-huh (positive response). Yes.
9 current one that's three.	9 Q. Where did you live -- Did you live anywhere
10 Q. Any spouses that are deceased?	10 in Tuscaloosa prior to 2003?
11 A. No.	11 A. No.
12 Q. So the three you've given me are it?	12 Q. Did you move to Tuscaloosa in 2003?
13 A. That's it.	13 A. Well, let's say I changed my address at
14 Q. And enough I --	14 that time when we got married and -- but I
15 A. That's enough.	15 still was employed here, so I still
16 Q. -- would gather.	16 maintained that residence. But I use that
17 Does Betty live in Montgomery?	17 as my primary.
18 A. No.	18 Q. Have you maintained a residence in
19 Q. Where does she live?	19 Tuscaloosa throughout the length of your
20 A. Tuscaloosa.	20 current tenure as personnel manager of the
21 Q. Where does Grace live?	21 central office for the Department of Mental
22 A. Ohio.	22 Health?
23 Q. And where does Annie Grace live?	23 A. No.
Page 115	Page 117
1 A. West Virginia.	1 Q. That's what I'm trying to clear up in my
2 Q. Where do you live?	2 own mind.
3 A. Tuscaloosa.	3 A. I told you I got married in '03.
4 Q. What address?	4 Q. Yes, sir.
5 A. 1600 Wakefield Drive.	5 A. I was here from '98 until right now, which
6 Q. Do you have an apartment or home in	6 I'm still currently in that house, but my
7 Montgomery?	7 home of record is Tuscaloosa.
8 A. I have a house here.	8 Q. And what I'm trying to gather -- and I'm
9 Q. And what address?	9 sorry if I'm not doing a very good job at
10 A. 6005 Neill Drive.	10 it. But I'm just trying to find out if
11 Q. N-E-I-L?	11 you've lived in Tuscaloosa anytime prior to
12 A. N-E-I-L-L.	12 2003.
13 Q. How long have you lived in Tuscaloosa?	13 A. No. Other than a student at Stillman, of
14 A. Since '03.	14 course. That was back in '63. Yeah.
15 Q. How long have you lived at the address in	15 Q. So has Montgomery, then, been your -- been
16 Montgomery?	16 a residence of yours for at least 10, 15
17 A. Since '98.	17 years or longer?
18 Q. Have you lived at that address in	18 A. Since '98, 1998.
19 Montgomery since you became the department	19 Q. I wrote down that you've lived on Neill
20 personnel manager at the central office?	20 Drive since '98; correct?
21 A. That's correct.	21 A. Yes.
22 Q. Were you living anywhere in Montgomery	22 Q. When did you live on Court Street?
23 before '98?	23 A. It was from '80 until '87.

Page 118	Page 120
<p>1 Q. Are you a member of any clubs or 2 organizations here in the Montgomery area? 3 A. No. 4 Q. Do you attend church here in Montgomery? 5 A. No. 6 Q. Are you a member of any fraternal 7 organizations here in Montgomery? 8 A. I'm a member of a fraternal organization, 9 but it's a national organization. 10 Q. Would that be Kappa Alpha Psi? 11 A. That's correct. 12 Q. Any others besides that one? 13 A. No. 14 (Plaintiffs' Exhibit 48 was marked 15 for identification.) 16 Q. Let me show you what I am marking as 17 Plaintiffs' Exhibit 48. Now, you told me 18 earlier about a Form 40 that came up in our 19 discussions this morning. Is that a Form 20 40, Plaintiffs' Exhibit 48? 21 A. No. 22 Q. What is that document called? 23 A. It's an employee preappraisal form.</p>	<p>1 through. I don't recall seeing a Form 40 2 in any of the records that have been 3 produced to me. Can you tell me if you 4 know if Marilyn Benson has a Form 40 in her 5 personnel files? 6 A. I'm not real certain that we keep Form 40s 7 in the personnel files anymore. I think 8 they might be kept separately. I'm not 9 sure. 10 Q. But they are considered a personnel record; 11 correct? 12 A. As part of the personnel record, yeah. 13 Q. And what is the function or purpose of a 14 Form 40? 15 A. State personnel kind of indicates that all 16 of the state positions should have a Form 17 40. 18 Q. But you have -- 19 A. Position questionnaire is what they're 20 actually called. 21 Q. And what does a Form 40 list? What 22 information would you put in a Form 40? 23 A. The description of basically what the</p>
Page 119	Page 121
<p>1 Q. So there would be a separate -- And for the 2 record Plaintiffs' Exhibit 48 is the 3 employee preappraisal form for Marilyn 4 Benson for the period covered from March 4, 5 2006 to September 3rd, 2006; is that 6 correct? 7 A. That's correct. 8 Q. And so the Form 40 for Marilyn Benson -- 9 well, this wouldn't be it. 10 A. No, this is not it. 11 Q. But the Form 40 would be part of her 12 personnel file; is that correct? 13 A. Should be. 14 Q. She should have a Form 40; right? 15 A. Should be. 16 Q. And every -- 17 A. Should have one. 18 Q. And every employee in your office ought to 19 have a Form 40; is that correct? 20 A. They should have Form 40s. But then we 21 find out when we began looking for them 22 that everybody doesn't have one, so ... 23 Q. Well, I will represent to you that I looked</p>	<p>1 position requires and the time frames that 2 it requires you to accomplish certain tasks 3 if it's broken down that way. And I've 4 seen so many that are so different that are 5 done differently by -- from one department 6 to the next. 7 Q. Okay. But am I correct that the purpose of 8 a Form 40 is basically to list the major 9 job functions of the particular employer 10 that it -- I mean, particular employee that 11 it covers? 12 A. Yes. 13 Q. So if I were to get a Form 40, for example, 14 of Joan Owens, then it should tell me the 15 major job duties and responsibilities of 16 Joan Owens? 17 A. Yes. 18 Q. And then similarly using Lynn Hubbard as an 19 example. If I were to obtain her Form 40, 20 it should tell me her major job duties and 21 responsibilities? 22 A. Yes. 23 Q. And the same would apply for you, Marilyn</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 122	Page 124
<p>1 Benson or anyone else; correct?</p> <p>2 A. That's correct.</p> <p>3 MR. MOZINGO: And by the way,</p> <p>4 Chip, I'm going to</p> <p>5 double-check, but I don't</p> <p>6 think I have Form 40s.</p> <p>7 MR. NIX: For anybody?</p> <p>8 MR. MOZINGO: For anybody. I will</p> <p>9 double-check. But</p> <p>10 obviously that would be --</p> <p>11 MR. NIX: Henry is saying</p> <p>12 apparently they're kept</p> <p>13 somewhere different than the</p> <p>14 personnel files. Is that</p> <p>15 right?</p> <p>16 THE WITNESS: That's very</p> <p>17 possible. And I can't even</p> <p>18 swear to that because I'd just</p> <p>19 have to go back and look.</p> <p>20 MR. NIX: I don't know. We will</p> <p>21 check, though.</p> <p>22 Q. But certainly as personnel director you'd</p> <p>23 be aware that the employer is supposed to</p>	<p>1 Form 40?</p> <p>2 MR. MOZINGO: Well, I would</p> <p>3 want --</p> <p>4 MR. NIX: Any Form 40 we've got?</p> <p>5 MR. MOZINGO: -- any Form 40 for</p> <p>6 the time period we asked for</p> <p>7 for these employees. And I</p> <p>8 think what we've been given is</p> <p>9 my understanding was their</p> <p>10 entire personnel file.</p> <p>11 MR. NIX: That's correct.</p> <p>12 MR. MOZINGO: So that would be</p> <p>13 part of their personnel file,</p> <p>14 Form 40.</p> <p>15 MR. NIX: Well, apparently not.</p> <p>16 THE WITNESS: Well, I mean, it's</p> <p>17 just like --</p> <p>18 MR. NIX: Apparently it's</p> <p>19 somewhere else.</p> <p>20 MR. MOZINGO: It's a personnel</p> <p>21 record.</p> <p>22 MR. NIX: Yeah.</p> <p>23 THE WITNESS: It's just like the</p>
Page 123	Page 125
<p>1 keep a Form 40 on file for its employees?</p> <p>2 A. Yes.</p> <p>3 Q. And that obligation would apply to the</p> <p>4 Department of Human Resources' central</p> <p>5 office too?</p> <p>6 A. Yes.</p> <p>7 MR. MOZINGO: So if we could find</p> <p>8 those --</p> <p>9 MR. NIX: Okay.</p> <p>10 MR. MOZINGO: I'll go back and</p> <p>11 look in my file and</p> <p>12 double-check, but I don't</p> <p>13 recall seeing any Form 40s.</p> <p>14 MR. NIX: Don't worry about it.</p> <p>15 Let me ask you this, Flynn.</p> <p>16 Do you want me to produce</p> <p>17 the -- Well, I assume the Form</p> <p>18 40 -- Does the Form 40 ever</p> <p>19 change, Henry?</p> <p>20 THE WITNESS: They're updated if</p> <p>21 your position changes, yeah.</p> <p>22 MR. NIX: So you want the current</p> <p>23 Form 40 for everybody or any</p>	<p>1 insurance card doesn't go in</p> <p>2 the personnel file, but it's</p> <p>3 part of that.</p> <p>4 Q. Well, you brought up a good point, then.</p> <p>5 Other than -- Well, let me ask it this</p> <p>6 way: What documents are personnel records</p> <p>7 that would not be kept in the personnel</p> <p>8 file?</p> <p>9 A. Health insurance information, background</p> <p>10 check information. Those are some that I</p> <p>11 remember specifically.</p> <p>12 Q. And apparently Form 40s?</p> <p>13 A. And possibly Form 40s. I'm not real</p> <p>14 certain about that. We'd just have to look</p> <p>15 and see.</p> <p>16 Q. Anything else?</p> <p>17 A. Nothing I can think of right now.</p> <p>18 Q. Is the Form 40 used in any way in</p> <p>19 preparing -- well, for example, Plaintiffs'</p> <p>20 Exhibit 48 for Marilyn Benson. Would her</p> <p>21 Form 40 have been utilized in preparing the</p> <p>22 duties and responsibilities set forth in</p> <p>23 that exhibit?</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 126

1 A. It could have been, but it didn't have to  
 2 necessarily be utilized for this purpose.  
 3 Q. Can you explain to the jury what  
 4 Plaintiffs' Exhibit 48 --  
 5 A. We're back to the jury again.  
 6 Q. We're back to the jury again, yes, sir.  
 7 Could you explain to the jury what  
 8 Plaintiffs' Exhibit 48 is and how it's  
 9 used?  
 10 MR. NIX: Plaintiffs' Exhibit 48?  
 11 MR. MOZINGO: Plaintiffs' Exhibit  
 12 48.  
 13 A. Explain -- You'll have to ask that question  
 14 again.  
 15 MR. NIX: I'm sorry. I  
 16 interrupted you, Flynn.  
 17 MR. MOZINGO: That's all right.  
 18 Q. Can you explain to the jury -- Can you  
 19 identify for the jury what Plaintiffs'  
 20 Exhibit 48 is and how it is used?  
 21 A. That is a preappraisal form that when -- at  
 22 the appraisal time during each year you  
 23 determine what position -- what duties or R

Page 127

1 and R's are prepared for the following  
 2 year. And you come up with that from the  
 3 job description, the job specs or whatever  
 4 documents that you're using to determine  
 5 what that person is going to be doing. And  
 6 if you have a Form 40 to do that with,  
 7 that's fine and dandy. You can use that  
 8 too. But it's nothing set in gold --  
 9 etched in gold to say that you've got to  
 10 use the Form 40 to do that.  
 11 Q. The duties and responsibilities -- I'm  
 12 sorry -- the responsibilities and results  
 13 that are listed on Plaintiffs' Exhibit 48,  
 14 are those the responsibilities that Marilyn  
 15 Benson was being appraised upon for the  
 16 period covered between March 4th, 2006 and  
 17 September 3rd, 2006?  
 18 A. Yes.  
 19 Q. So in other words, those are the  
 20 responsibilities that she had during that  
 21 time period and in which you were examining  
 22 her on to give her an appraisal?  
 23 A. Yes.

Page 128

1 Q. Did you prepare Plaintiffs' Exhibit 48?  
 2 A. I'm quite sure --  
 3 MR. NIX: When you say prepared,  
 4 do you mean type or do you  
 5 mean -- what do you mean?  
 6 Q. Well, can you type?  
 7 A. No.  
 8 Q. No?  
 9 A. (Witness shakes head).  
 10 These are the factors or should I say  
 11 responsibilities and results that are done  
 12 in conjunction with the employee.  
 13 Q. When you say done in conjunction, do you  
 14 sit down with the employee ahead of time --  
 15 because I know it does say preappraisal up  
 16 at the top. Do you sit down ahead of time  
 17 and say, all right, these are the  
 18 responsibilities I'm going to grade you on  
 19 for this time period --  
 20 A. No.  
 21 Q. -- to see how you're doing?  
 22 A. No.  
 23 Q. How does that work, then?

Page 129

1 A. When you do your current performance  
 2 appraisal, you have that preappraisal at  
 3 the same time. And once you complete the  
 4 performance appraisal, then you begin to  
 5 look at the preappraisal for the next  
 6 term. And that's when you discuss as to is  
 7 it something we need to change, do we need  
 8 to add anything.  
 9 Q. In preparing this preappraisal, do you list  
 10 the employee's primary responsibility for  
 11 the period covered or primary job duties  
 12 for the period covered?  
 13 A. It's already on the current form that  
 14 you're using. So you determine at that  
 15 time do you want to continue to use the  
 16 same ones or do we want to change.  
 17 Q. Okay. Well, let's take Marilyn Benson.  
 18 This preappraisal is for her  
 19 classification. It says Department  
 20 Assistant Personnel Manager. So I'm  
 21 assuming there had to be a very first  
 22 preappraisal that was done for her in that  
 23 new classification; correct?

Deposition of Henry E. Ervin

June 10, 2008

Page 130	Page 132
<p>1 A. Yeah. That was the first one, yeah.</p> <p>2 Q. And so in sitting down to do her first</p> <p>3 preappraisal, would you have had that</p> <p>4 preappraisal prepared? Would you, Henry</p> <p>5 Ervin, have had it prepared?</p> <p>6 A. It should have been prepared, yes.</p> <p>7 Q. And it should have been prepared at your</p> <p>8 directions?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who prepared her first</p> <p>11 preappraisal?</p> <p>12 A. No, I don't. But I'm quite sure I had a</p> <p>13 major piece in it.</p> <p>14 Q. Right. And I'm going to ask you about</p> <p>15 that. I'm just asking you who would have</p> <p>16 actually typed it up.</p> <p>17 A. Well, that could have been the person who</p> <p>18 handles performance appraisal that I would</p> <p>19 have asked to type it in or whatever. So</p> <p>20 I'm not real certain.</p> <p>21 Q. So you don't recall --</p> <p>22 A. No.</p> <p>23 Q. -- for her first preappraisal who would</p>	<p>1 as department assistant or personnel</p> <p>2 manager and gone over these</p> <p>3 responsibilities and informed her that</p> <p>4 these were the responsibilities that she</p> <p>5 will be appraised upon?</p> <p>6 A. That's correct.</p> <p>7 Q. I thought that's how it worked. I know we</p> <p>8 kind of went through a process to get</p> <p>9 there, but I thought that's how it worked.</p> <p>10 A. Okay.</p> <p>11 Q. And was Marilyn Benson, in fact, appraised</p> <p>12 upon these responsibilities and duties at</p> <p>13 the end of September 3rd, 2006?</p> <p>14 A. You know, I don't specifically remember,</p> <p>15 but I'd like to think she was, yeah.</p> <p>16 Q. And who would have done that appraisal?</p> <p>17 A. I would have.</p> <p>18 Q. And is it the supervisor's responsibility,</p> <p>19 then, to prepare or have prepared the</p> <p>20 preappraisal for the employee the</p> <p>21 supervisor is supervising and then take</p> <p>22 that preappraisal and prepare an appraisal</p> <p>23 on it at the end of the period covered?</p>
Page 131	Page 133
<p>1 have typed it up?</p> <p>2 A. No.</p> <p>3 Q. Who handles performance appraisals in the</p> <p>4 office?</p> <p>5 A. Gina Watts.</p> <p>6 Q. So I guess it's possible Gina Watts would</p> <p>7 have typed it up at your direction?</p> <p>8 A. Could have, yes.</p> <p>9 Q. Is it possible that someone else could have</p> <p>10 prepared it at your direction?</p> <p>11 A. I guess it's possible, but I just don't</p> <p>12 remember anybody else who was doing</p> <p>13 performance appraisals at the time.</p> <p>14 Q. How about I ask it this way. Whoever</p> <p>15 prepared it, would they have prepared it at</p> <p>16 your direction?</p> <p>17 A. Yes.</p> <p>18 Q. And in preparing it at your direction, you</p> <p>19 would have told them which responsibilities</p> <p>20 and results to list in the preappraisal?</p> <p>21 A. Right.</p> <p>22 Q. And then you would have sat down with</p> <p>23 Ms. Benson for her very first preappraisal</p>	<p>1 A. To prepare the preappraisal for the</p> <p>2 following appraisal?</p> <p>3 Q. That's correct.</p> <p>4 A. Yeah.</p> <p>5 Q. And then prepare the appraisal based upon</p> <p>6 the preappraisal?</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Ervin, was Plaintiffs' Exhibit 46 ever</p> <p>9 given to the job evaluation committee?</p> <p>10 MR. NIX: You mean that specific</p> <p>11 document?</p> <p>12 MR. MOZINGO: The job</p> <p>13 specification.</p> <p>14 MR. NIX: I think, Flynn, you'll</p> <p>15 find that that may -- that's</p> <p>16 been amended and was amended.</p> <p>17 MR. MOZINGO: Do you have the</p> <p>18 amendment?</p> <p>19 MR. NIX: You've got everything.</p> <p>20 As a matter of fact -- Yeah.</p> <p>21 I mean, you have more, I</p> <p>22 think, than you realize maybe,</p> <p>23 but ...</p>

Page 134	Page 136
<p>1 A. I don't remember specifically whether the</p> <p>2 actual job spec was presented or the -- I</p> <p>3 know the job was discussed several times.</p> <p>4 But as to whether that was actually</p> <p>5 presented to them, I would like to think</p> <p>6 that it was, but then again it could not</p> <p>7 have been.</p> <p>8 Q. Well, let me ask it this way, then, since</p> <p>9 I'm confused as to whether there's more</p> <p>10 than one job specification sheet. Do you</p> <p>11 know if a job specification sheet for the</p> <p>12 position of Departmental Assistant</p> <p>13 Personnel Manager was ever presented to the</p> <p>14 job evaluation committee?</p> <p>15 A. No, I don't.</p> <p>16 MR. NIX: Let me amend something I</p> <p>17 said. What I said was that's</p> <p>18 been amended. And I think</p> <p>19 that is probably correct. I</p> <p>20 think Henry testified in one</p> <p>21 of the previous sessions that</p> <p>22 there's a book of</p> <p>23 specifications. Do you</p>	<p>1 MR. MOZINGO: I think I know what</p> <p>2 you're talking about.</p> <p>3 MR. NIX: I was unaware of -- and</p> <p>4 we'll check, okay, to see what</p> <p>5 the book has in it. But if</p> <p>6 it's different from that, I'll</p> <p>7 provide it to you.</p> <p>8 Q. And what I'm going to do so the record will</p> <p>9 be perfectly clear, Mr. Ervin -- and your</p> <p>10 lawyer will know what I'm talking about, so</p> <p>11 he can help you with this. What I would</p> <p>12 ask you to do, Plaintiffs' Exhibit 46 is</p> <p>13 the only job specification that I've ever</p> <p>14 seen for the position of Departmental</p> <p>15 Assistant Personnel Manager. When we get</p> <p>16 done today, would you please look at your</p> <p>17 records in the central office and see if</p> <p>18 there is another job specification for this</p> <p>19 same position other than the one dated</p> <p>20 January 2005 --</p> <p>21 A. Yes.</p> <p>22 Q. -- and produce that to me, please.</p> <p>23 A. Sure.</p>
Page 135	Page 137
<p>1 remember him saying that?</p> <p>2 MR. MOZINGO: Henry testified?</p> <p>3 MR. NIX: Right. That</p> <p>4 specifications are kept in a</p> <p>5 specification --</p> <p>6 MR. MOZINGO: You mean testified</p> <p>7 this morning?</p> <p>8 MR. NIX: Yeah. Before lunch.</p> <p>9 And so that's the only one of</p> <p>10 those I've seen; okay? I want</p> <p>11 to make sure I'm clear with</p> <p>12 you. But this document is, I</p> <p>13 guess, really what I'm talking</p> <p>14 about.</p> <p>15 MR. MOZINGO: Plaintiffs' Exhibit</p> <p>16 47?</p> <p>17 MR. NIX: Yeah.</p> <p>18 MR. MOZINGO: That's the</p> <p>19 announcement.</p> <p>20 MR. NIX: That's the announcement</p> <p>21 that I've seen that's</p> <p>22 different, okay, and that you</p> <p>23 have. But, now, if --</p>	<p>1 Q. And what I'm going to assume is if you</p> <p>2 don't produce it to me, I will just assume</p> <p>3 that this is it.</p> <p>4 A. That's it.</p> <p>5 Q. That's the only one. Is that fair?</p> <p>6 A. That's fair.</p> <p>7 Q. Now, you don't know if Plaintiffs' Exhibit</p> <p>8 46 was ever presented to the job evaluation</p> <p>9 committee?</p> <p>10 A. I just can't sit here and say</p> <p>11 specifically. I remember we discussed this</p> <p>12 job so many times in terms of the</p> <p>13 commissioner, the associates, everybody.</p> <p>14 So I know it's been passed around quite a</p> <p>15 bit, but whether it got to the job</p> <p>16 evaluation committee, I just can't say that</p> <p>17 for certain.</p> <p>18 Q. Was Plaintiffs' Exhibit 46 ever given to</p> <p>19 Otha Dillihay?</p> <p>20 A. Yes.</p> <p>21 Q. It was?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know when it was given to him?</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 138

Page 140

1 A. No.  
 2 Q. Was it given to him prior to the  
 3 announcement of the intent to fill the  
 4 position of Departmental Assistant  
 5 Personnel Manager?  
 6 A. Yes.  
 7 Q. Was Plaintiffs' Exhibit -- and the  
 8 announcement that I'm referring to would be  
 9 what's been marked as Plaintiffs' Exhibit  
 10 47; correct?  
 11 A. Correct.  
 12 Q. And so it's your testimony that Plaintiffs'  
 13 Exhibit 46 would have been given to Otha  
 14 Dillihay prior to September 15th, 2005?  
 15 MR. NIX: Are you talking about  
 16 this one? Yeah. 47.  
 17 MR. MOZINGO: Yes.  
 18 Q. Is that your testimony?  
 19 A. Yes.  
 20 Q. Would Plaintiffs' Exhibit 46 have been  
 21 given to Commissioner John Houston?  
 22 A. Yes.  
 23 Q. Would it have been given to him prior to

Page 139

1 September 15th, 2005?  
 2 A. Yes.  
 3 Q. Was Plaintiffs' Exhibit 46 ever given to  
 4 June Lynn?  
 5 A. Yes.  
 6 Q. Would it have been given to her prior to  
 7 September 15th, 2005?  
 8 A. Yes.  
 9 Q. Was Plaintiffs' Exhibit 46 ever given to  
 10 Marilyn Benson?  
 11 A. She would have had access to that.  
 12 Q. Would she have had access to it prior to  
 13 September 15th, 2005?  
 14 A. Yes.  
 15 Q. Was Plaintiffs' Exhibit 46 ever given to  
 16 Joan Owens?  
 17 A. No.  
 18 Q. Was Plaintiffs' Exhibit 46 ever given to  
 19 Lynn Hubbard?  
 20 A. No.  
 21 Q. Who prepared Plaintiffs' Exhibit 47? Who  
 22 typed it?  
 23 A. I don't recall.

1 Q. Is it possible that Marilyn Benson typed  
 2 Plaintiffs' Exhibit 47?  
 3 A. I don't believe so because she was not  
 4 responsible for sending that announcement  
 5 out.  
 6 Q. Do you have any idea who could have  
 7 prepared Plaintiffs' Exhibit 47?  
 8 A. The only other person I can think of would  
 9 have been Rebecca Taylor.  
 10 Q. Who was responsible for sending the notice  
 11 out?  
 12 A. Rebecca Taylor.  
 13 Q. Why was Plaintiffs' Exhibit 46 not given to  
 14 Joan Owens or Lynn Hubbard?  
 15 MR. NIX: May I ask you at what  
 16 point in time you're talking  
 17 about?  
 18 MR. MOZINGO: Well, he testified  
 19 it wasn't given to them.  
 20 MR. NIX: Well, I know he did.  
 21 But, you know, the job was  
 22 advertised in 47 and there's  
 23 another one as well that was

Page 141

1 sent. Both of those were  
 2 public -- publicly or at least  
 3 they were sent out. So they  
 4 may have seen them then I  
 5 guess is what I'm trying to  
 6 say.  
 7 Q. Mr. Ervin, when the job was advertised to  
 8 the public, was it advertised through the  
 9 document that's been marked Plaintiffs'  
 10 Exhibit 47?  
 11 A. Yes.  
 12 Q. Was it advertised with Plaintiffs' Exhibit  
 13 46?  
 14 A. This doesn't -- It's not used as  
 15 advertisement. That's the job  
 16 specification.  
 17 Q. Why was Plaintiffs' Exhibit 46 never given  
 18 to Joan Owens or Lynn Hubbard?  
 19 A. Well, first of all, Joan Owens and Lynn  
 20 Hubbard were not the responsible people for  
 21 pulling together classifications for the  
 22 ones that I asked that to be pulled  
 23 together. I didn't ask them to do it.

Page 142	Page 144
<p>1 That's the reason they were not given the</p> <p>2 thing.</p> <p>3 Q. Who did you ask to do it?</p> <p>4 A. I asked Marilyn Benson to do the background</p> <p>5 information, work for me on this particular</p> <p>6 position.</p> <p>7 Q. Why did you ask Marilyn Benson?</p> <p>8 A. Because she was the person who had been</p> <p>9 doing that kind of work for the whole</p> <p>10 classification and pay system for the</p> <p>11 exempt classes.</p> <p>12 Q. Did anyone else have the ability to do that</p> <p>13 kind of work?</p> <p>14 A. We're not talking about the ability. We're</p> <p>15 talking about the person who was there to</p> <p>16 do it.</p> <p>17 Q. I know. But my question is, did anyone</p> <p>18 else have the ability to do that kind of</p> <p>19 work?</p> <p>20 A. There were other people who could have done</p> <p>21 part of that, yes.</p> <p>22 Q. Such as?</p> <p>23 A. Joan and Lynn.</p>	<p>1 Mr. Dillihay and other folks. But, no, not</p> <p>2 them.</p> <p>3 Q. No. I mean, prior to January 2005 would</p> <p>4 you sometimes discuss with central office</p> <p>5 staff member that a job specification was</p> <p>6 being prepared for a given position?</p> <p>7 A. If there was one that I felt a need to</p> <p>8 bring up at the time I would have. But I</p> <p>9 don't even recall any job spec that I even</p> <p>10 talked about that was being established.</p> <p>11 Q. Why did you not discuss Plaintiffs' Exhibit</p> <p>12 46 with the office staff when it was being</p> <p>13 prepared or formulated?</p> <p>14 A. I had asked the appropriate person -- that</p> <p>15 I felt was the appropriate person and who</p> <p>16 the job description reflected being the</p> <p>17 appropriate person that I needed some help</p> <p>18 in terms of gathering some information, not</p> <p>19 even thinking that this is going to be your</p> <p>20 job or whatever. I wanted somebody to</p> <p>21 develop a spec or help me to develop a</p> <p>22 spec, get some background information so</p> <p>23 that I could present it to the</p>
Page 143	Page 145
<p>1 Q. Why did you not ask Joan and Lynn to</p> <p>2 help --</p> <p>3 MR. NIX: Object to the form. I</p> <p>4 think it's been asked and</p> <p>5 answered.</p> <p>6 Q. -- with Plaintiffs' Exhibit 46?</p> <p>7 A. First of all, Mr. Mozingo, I didn't need</p> <p>8 any help from Joan and Lynn to do one job</p> <p>9 spec. I mean, there are other job specs</p> <p>10 that are being done that they don't see all</p> <p>11 the time when they're developed.</p> <p>12 Q. When job specs are being prepared, has it</p> <p>13 ever been the practice in your office to</p> <p>14 discuss the preparation of those specs with</p> <p>15 all office staff?</p> <p>16 A. The practice?</p> <p>17 Q. Correct.</p> <p>18 A. At times I've done that. At times I've not</p> <p>19 done that.</p> <p>20 Q. And did you do that at times prior to</p> <p>21 January 2005?</p> <p>22 A. I don't believe so. I think it was</p> <p>23 discussed with the commissioner and</p>	<p>1 commissioner, the associate and the JEC.</p> <p>2 Q. Did you have any idea that Marilyn Benson</p> <p>3 intended to apply for the position of</p> <p>4 Departmental Assistant Personnel Manager</p> <p>5 before that position was advertised as</p> <p>6 reflected in Plaintiffs' Exhibit 47?</p> <p>7 A. We didn't talk about it at all.</p> <p>8 Q. Did Marilyn Benson ever tell you that she</p> <p>9 intended to apply for the position of</p> <p>10 Departmental Assistant Personnel Manager</p> <p>11 before the announcement as reflected in</p> <p>12 Plaintiffs' Exhibit 47?</p> <p>13 A. No. Only after this was completed.</p> <p>14 Q. When you say this, what are you referring</p> <p>15 to?</p> <p>16 A. The announcement.</p> <p>17 Q. Plaintiffs' Exhibit 47?</p> <p>18 A. Yes.</p> <p>19 Q. So the only time that she told you she</p> <p>20 intended to apply was after Plaintiffs'</p> <p>21 Exhibit 47 was completed?</p> <p>22 A. That's what I remember.</p> <p>23 Q. Is it possible she told you beforehand?</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 146

1 A. It's possible, but I don't remember it.  
 2 Q. What did you ask Marilyn Benson to do with  
 3 respect to the creation of Plaintiffs'  
 4 Exhibit 46?  
 5 A. To do some research as it relates to an  
 6 assistant departmental personnel director,  
 7 do comparable -- find comparable  
 8 announcements or job specs from the State  
 9 of Alabama Personnel Department and  
 10 wherever you can go on the Web and find  
 11 comparable positions and let me look at  
 12 them.  
 13 Q. I wrote down do research for the position,  
 14 find comparable job specs from the State of  
 15 Alabama, and go on the Web and find  
 16 comparable positions.  
 17 A. Yes.  
 18 Q. Is that what you testified to?  
 19 A. Uh-huh (positive response).  
 20 Q. Is there anything else you asked her to do  
 21 besides those three things?  
 22 A. Nothing I can think of at this point.  
 23 Q. Did she ever share with you anything that

Page 147

1 she found on the Web? And let me ask it  
 2 this way and make sure you understand my  
 3 question. Did she ever print off anything  
 4 that she found on the Web concerning any  
 5 research she conducted for you and show it  
 6 to you?  
 7 A. I believe so, but I just -- and I think it  
 8 was from the state of Georgia, but I can't  
 9 specifically tell you exactly what it was  
 10 because we're talking a ways back that I  
 11 just don't remember specifically.  
 12 Q. Was it a job announcement from the state of  
 13 Georgia?  
 14 A. I don't remember whether it was a job  
 15 announcement or job description or job  
 16 spec. I just don't remember.  
 17 Q. Well, do you remember what the job was for  
 18 that you would have looked at from the  
 19 state of Georgia?  
 20 A. I guess in my thinking it was an assistant  
 21 personnel manager type position.  
 22 Q. Or a personnel manager?  
 23 A. Could have been a personnel manager. I

Page 148

1 know at the State of Alabama there were  
 2 personnel manager positions.  
 3 Q. Did you look at any of the personnel  
 4 management position criteria for the State  
 5 of Alabama?  
 6 A. Yes.  
 7 Q. Would Marilyn Benson have retrieved those  
 8 for you to look at?  
 9 A. I think I might have asked for those to be  
 10 sent to me from State Personnel myself.  
 11 Q. Did you ask Marilyn Benson to retrieve them  
 12 also?  
 13 A. I could have, but I remember getting some  
 14 myself, though.  
 15 Q. Do you remember if you got them from  
 16 Ms. Benson or from State Personnel?  
 17 A. From State Personnel.  
 18 Q. The position that you looked at from the  
 19 state of Georgia, did you save that?  
 20 A. Don't remember.  
 21 Q. Well, would you have maintained -- Strike  
 22 that.  
 23 Would either you, Ms. Benson or someone

Page 149

1 working under your directions have  
 2 maintained a research folder for this  
 3 assignment?  
 4 A. I don't have one and I can't speak and say  
 5 that she does or not.  
 6 Q. Do you know if one exists?  
 7 A. I don't know that.  
 8 Q. Have you ever heard of one for this  
 9 position -- a research folder for this  
 10 position?  
 11 A. No.  
 12 Q. Do you recall what you did with the job  
 13 description from Georgia?  
 14 A. No.  
 15 Q. Do you recall anything contained in the job  
 16 description from Georgia?  
 17 A. No.  
 18 Q. Did she obtain any other job descriptions  
 19 for you from any other state?  
 20 A. None that I can recall.  
 21 Q. Well, did she show you any from Florida?  
 22 MR. NIX: I'm sorry. He said none  
 23 that he recalls.

Page 150	Page 152
<p>1 A. I don't remember specifically anything from</p> <p>2 Florida.</p> <p>3 MR. MOZINGO: Well, if I mention a</p> <p>4 state, he may be able to</p> <p>5 recall.</p> <p>6 Q. You don't remember any from Florida?</p> <p>7 A. No.</p> <p>8 Q. Did she show you any from Tennessee?</p> <p>9 A. I don't remember anything other than the</p> <p>10 ones from Alabama and Georgia at this point</p> <p>11 in time; okay?</p> <p>12 Q. Okay. And the ones that you looked at from</p> <p>13 Alabama, what positions were they for?</p> <p>14 A. Personnel -- Do you want to add something</p> <p>15 to that question?</p> <p>16 Q. I just want to make sure that I'm referring</p> <p>17 to what you got from the State Personnel</p> <p>18 Department.</p> <p>19 A. Personnel Manager I, II and III.</p> <p>20 Q. Besides obtaining job specs for you to</p> <p>21 review, did Marilyn Benson give you</p> <p>22 anything else to look at?</p> <p>23 A. Not that I can remember.</p>	<p>1 thinking that I might have gotten that</p> <p>2 myself.</p> <p>3 Q. Okay. So the only thing Ms. Benson would</p> <p>4 have given you would have been the</p> <p>5 information from the state of Georgia?</p> <p>6 A. And -- Yeah.</p> <p>7 Q. Do you know if the information from the</p> <p>8 state of Georgia concerned a specific job</p> <p>9 at a specific facility in Georgia?</p> <p>10 A. I'm thinking it was, but I couldn't tell</p> <p>11 you exactly what that facility was and what</p> <p>12 that particular job was.</p> <p>13 Q. Well, do you know if it concerned a job</p> <p>14 with the equivalent of the Mental Health</p> <p>15 Department in Georgia or some other</p> <p>16 department?</p> <p>17 A. I think it was Mental Health.</p> <p>18 Q. And you believe you got the Form 40s, the</p> <p>19 one for you and the one for Butch King, on</p> <p>20 your own?</p> <p>21 A. Yeah. I think --</p> <p>22 MR. NIX: He didn't say that it</p> <p>23 was necessarily both. But I</p>
Page 151	Page 153
<p>1 Q. So the only thing that you can remember</p> <p>2 today in your testimony is some type of job</p> <p>3 description from the state of Georgia that</p> <p>4 she would have given you?</p> <p>5 A. And I think there was also a Form 40 for</p> <p>6 either me or Butch King, one of those.</p> <p>7 Because at one point in time we were both</p> <p>8 in an assistant personnel director's</p> <p>9 position.</p> <p>10 Q. So she presented you with information from</p> <p>11 Georgia and possibly a Form 40 for you or</p> <p>12 Butch King?</p> <p>13 A. And I'm not saying she's the one that gave</p> <p>14 me that. I could have found that myself.</p> <p>15 But I just don't remember which one it was.</p> <p>16 Q. And my question right now is, what did</p> <p>17 Ms. Benson give you?</p> <p>18 A. Yeah. Well, I just -- That's all she has</p> <p>19 given me.</p> <p>20 Q. Was the information from Georgia and I</p> <p>21 guess possibly a Form 40 for you and Butch</p> <p>22 King?</p> <p>23 A. No. Don't even put the possibly. I'm</p>	<p>1 mean -- I'm sorry. I object</p> <p>2 to the form of the question.</p> <p>3 A. One of the two.</p> <p>4 Q. Who is Butch King?</p> <p>5 A. He was a former personnel director for</p> <p>6 Mental Health.</p> <p>7 Q. And when did he serve as personnel</p> <p>8 director?</p> <p>9 A. Between '82 and '87.</p> <p>10 Q. So after you were there?</p> <p>11 A. Yes. No, no, no. While I was there.</p> <p>12 Q. I meant to say -- Okay. Was he a personnel</p> <p>13 director or assistant personnel director?</p> <p>14 A. He was both.</p> <p>15 Q. Because you told me that at one time you</p> <p>16 held the position of assistant and Butch</p> <p>17 King also held that position?</p> <p>18 A. That's correct.</p> <p>19 Q. Did he hold that position under you?</p> <p>20 A. Yes.</p> <p>21 Q. And then when you moved on for some other</p> <p>22 work in your life, would he have become the</p> <p>23 personnel director after you?</p>

Page 154

1 A. Yes.  
 2 Q. And is that the natural progression for  
 3 that position as assistant that when the  
 4 personnel director moves on the assistant  
 5 moves up to that position?  
 6 A. No.  
 7 Q. Well, I didn't ask it in a time frame. Was  
 8 it the natural progression then back when  
 9 Butch King was with the department --  
 10 A. No.  
 11 Q. -- or your office?  
 12 A. No.  
 13 Q. Is that the natural progression now?  
 14 A. No.  
 15 Q. Do you know what you did with those Form  
 16 40s for you and Butch King?  
 17 A. I have no idea.  
 18 Q. Did you give them to Ms. Benson to look at?  
 19 A. That's very possible. I can't say that for  
 20 certain.  
 21 Q. And I guess you can't say if anybody has  
 22 retained those in any records, can you?  
 23 A. No. Can't say.

Page 155

1 Q. Did you ask Ms. Benson to do -- I'm sorry.  
 2 I've already asked this question. Strike  
 3 that.  
 4 My understanding for the record the  
 5 only documentation Ms. Benson would have  
 6 given you with respect to your request from  
 7 her would have been the job information  
 8 from Georgia; is that correct?  
 9 A. That's what I remember.  
 10 Q. And my next question is, did Ms. Benson  
 11 tell you or share any information with you  
 12 regarding her research?  
 13 A. I'm fairly certain we talked about it, but  
 14 I don't recall specifically what the  
 15 conversation was.  
 16 Q. Do you recall any conversation with  
 17 Ms. Benson regarding the job information  
 18 from Georgia?  
 19 A. Any specific thing, no.  
 20 Q. Yes, sir. Do you recall any general thing,  
 21 any general discussion with her regarding  
 22 the job information from Georgia?  
 23 A. No.

Page 156

1 Q. Do you recall any specific discussions with  
 2 Ms. Benson regarding any of the research  
 3 requests you gave her?  
 4 A. To be quite honest, no.  
 5 Q. Do you recall any general conversations  
 6 with Ms. Benson regarding the research  
 7 request you gave her?  
 8 A. Nothing specific.  
 9 Q. Well, the question is, do you recall  
 10 anything in general?  
 11 A. I'm quite sure we've had general  
 12 discussions, but I just don't remember any  
 13 specifics about what we discussed as it  
 14 relates to this position.  
 15 Q. Well, generally you would have told her to  
 16 do research for the position; correct?  
 17 A. That's correct.  
 18 Q. And generally you would have told her to  
 19 find comparable job specs; correct?  
 20 A. That's correct.  
 21 Q. And generally you would have told her to go  
 22 on the Web and find comparable job position  
 23 information?

Page 157

1 A. That's right.  
 2 Q. What, if anything, did Ms. Benson tell you  
 3 regarding the comparable job specs she was  
 4 researching?  
 5 A. You have to understand that at least I was  
 6 doing research myself, so I didn't depend  
 7 on what Ms. Benson was giving me to compile  
 8 data for this particular position. So I  
 9 don't remember anything in general or in  
 10 specific as to what I talked -- what she  
 11 gave me or what we even talked about.  
 12 Q. Okay. Thank you.  
 13 A. Okay.  
 14 Q. That's what I needed to know. Thank you.  
 15 A. Okay.  
 16 Q. Now, the research that you were doing  
 17 yourself, that was gathering -- possibly  
 18 gathering the Form 40 on yourself and Butch  
 19 King; correct?  
 20 A. Possibly, yeah.  
 21 Q. Any other research that you did yourself?  
 22 A. Other than looking at the job specs from  
 23 State Personnel.

Page 158	Page 160
<p>1 Q. Okay. State Personnel.</p> <p>2 A. Yeah.</p> <p>3 Q. Anything else?</p> <p>4 A. That's about it.</p> <p>5 Q. Do you recall when you gave this research</p> <p>6 assignment to Ms. Benson?</p> <p>7 A. Not really. I'm thinking maybe late '04 or</p> <p>8 early '05.</p> <p>9 Q. Did Commissioner Houston ever approve the</p> <p>10 document that's been marked Plaintiffs'</p> <p>11 Exhibit 46?</p> <p>12 A. That was shared with the commissioner. And</p> <p>13 I'm fairly certain that when the letter was</p> <p>14 sent to him that was attached to it. So,</p> <p>15 yes, I'm fairly certain it was approved by</p> <p>16 him. And more than on one occasion because</p> <p>17 we talked about it on several different</p> <p>18 occasions.</p> <p>19 Q. Did Commissioner Houston ever approve the</p> <p>20 document that's been marked Plaintiffs'</p> <p>21 Exhibit 47?</p> <p>22 A. He saw that and he approved it.</p> <p>23 Q. Do you recall when he approved it?</p>	<p>1 Q. When was the previous one abolished?</p> <p>2 A. It had to have been between '87, '88 and</p> <p>3 '98.</p> <p>4 Q. Would that have been during a time period</p> <p>5 when you were not working for the central</p> <p>6 personnel office?</p> <p>7 A. Yeah. Because Butch King was in the</p> <p>8 position until he was promoted to the</p> <p>9 position of personnel director.</p> <p>10 Q. Do you know why the position was abolished?</p> <p>11 A. I have no idea. I wasn't here.</p> <p>12 Q. Well, has anyone ever told you?</p> <p>13 A. No.</p> <p>14 Q. Have you ever asked?</p> <p>15 A. No.</p> <p>16 Q. Did you review any information regarding</p> <p>17 the old departmental assistant job in</p> <p>18 conjunction with approving Plaintiffs'</p> <p>19 Exhibit 46?</p> <p>20 A. Did I do what again?</p> <p>21 Q. Did you review any information from the old</p> <p>22 abolished job in conjunction with the</p> <p>23 creation of the new Departmental Assistant</p>
Page 159	Page 161
<p>1 A. I really am fairly certain it was sometimes</p> <p>2 between February and June. I just don't</p> <p>3 remember exactly when.</p> <p>4 Q. How does the process work, Mr. Ervin, as</p> <p>5 far as formulating a job -- maybe I should</p> <p>6 put it this way -- as far as identifying</p> <p>7 the need for a job and then formulating the</p> <p>8 job, what it will do and getting approval</p> <p>9 from the commissioner and announcing it?</p> <p>10 What is the process there? Because I've</p> <p>11 heard testimony, I've read your answers to</p> <p>12 interrogatories, and I'm just trying to</p> <p>13 figure out what steps you would follow to</p> <p>14 create this job and get it announced.</p> <p>15 A. If we're talking about establishing a new</p> <p>16 job or just requesting to get a job</p> <p>17 filled? What are we talking about?</p> <p>18 Q. Let's talk about establishing a new job.</p> <p>19 And let's be clear. Do you contend that</p> <p>20 the position of Departmental Assistant</p> <p>21 Personnel Manager is a new job?</p> <p>22 A. It was a new job because the previous one</p> <p>23 had been abolished.</p>	<p>1 Personnel Manager as reflected in</p> <p>2 Plaintiffs' Exhibit 46?</p> <p>3 A. I looked at it. I did some -- just</p> <p>4 comparisons to see whether there were</p> <p>5 similarities. But beyond that, I didn't do</p> <p>6 anything else.</p> <p>7 Q. Where is the information that you looked</p> <p>8 at?</p> <p>9 A. In fact, I was looking the other day and I</p> <p>10 can't find it. I can't put my hand on it</p> <p>11 right now.</p> <p>12 Q. So you can't locate it now?</p> <p>13 A. No.</p> <p>14 Q. Would you have been the person in</p> <p>15 possession of those records?</p> <p>16 A. Whether it was those records or one record,</p> <p>17 I'm not sure. Whether it was the one that</p> <p>18 I had or whether it was the one that Butch</p> <p>19 had I'm not real certain, but it was one of</p> <p>20 the two.</p> <p>21 Q. Is Butch still around?</p> <p>22 A. He works for DHR.</p> <p>23 Q. Did Butch supply you any information or</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 162	Page 164
<p>1 documents?</p> <p>2 A. No. Didn't talk to him.</p> <p>3 Q. But the document you had and would have</p> <p>4 looked at would have concerned the old</p> <p>5 abolished Departmental Assistant Personnel</p> <p>6 Manager position?</p> <p>7 A. Yes.</p> <p>8 Q. Did you give that to someone to keep?</p> <p>9 A. I don't recall. That's what I'm telling</p> <p>10 you now. I don't remember exactly what I</p> <p>11 did.</p> <p>12 Q. But you -- So in other words, you had it at</p> <p>13 one point --</p> <p>14 A. Uh-huh (positive response).</p> <p>15 Q. -- in the preparation for the new</p> <p>16 Departmental Assistant Personnel Manager</p> <p>17 specification?</p> <p>18 A. Yeah.</p> <p>19 Q. But you don't know where it is now?</p> <p>20 A. I don't. But I think I might be able to</p> <p>21 find it.</p> <p>22 MR. NIX: Flynn, wasn't the Form</p> <p>23 40 in his personnel file for</p>	<p>1 MR. MOZINGO: I asked about 46.</p> <p>2 A. I think you asked about both of them. You</p> <p>3 asked about both of them and I told you</p> <p>4 yes.</p> <p>5 Q. He would have approved Plaintiffs' Exhibit</p> <p>6 47?</p> <p>7 A. Yeah.</p> <p>8 Q. And did I ask you when he would have done</p> <p>9 it?</p> <p>10 A. Yeah. You asked me that too.</p> <p>11 Q. And you said?</p> <p>12 A. I told you somewhere between February and</p> <p>13 June. I remember exactly what I told you.</p> <p>14 Q. Well, good. I'm glad you do.</p> <p>15 A. Yeah.</p> <p>16 Q. That's a tremendous aid and benefit to me.</p> <p>17 Mr. Ervin, why was the substitution</p> <p>18 provision omitted from Plaintiffs' Exhibit</p> <p>19 46?</p> <p>20 A. Why was it omitted?</p> <p>21 Q. Yes, sir.</p> <p>22 A. It wasn't omitted. It was not placed in</p> <p>23 there. That was a job that I felt that we</p>
Page 163	Page 165
<p>1 that job?</p> <p>2 A. It might be.</p> <p>3 MR. NIX: That's what I --</p> <p>4 MR. MOZINGO: We'll see. I</p> <p>5 don't --</p> <p>6 MR. NIX: I could be wrong. I get</p> <p>7 the documents confused because</p> <p>8 this thing looks a whole lot</p> <p>9 like a Form 40.</p> <p>10 A. Yeah. And that's not -- But that's where I</p> <p>11 think it might be.</p> <p>12 Q. Was there a job specification for the old</p> <p>13 departmental assistant position?</p> <p>14 A. I told you the job specification concept</p> <p>15 when I first got here in 1980 was not used</p> <p>16 as we know it today. It was a job</p> <p>17 description of sorts written. And I</p> <p>18 couldn't even tell you what that looks</p> <p>19 like. We're talking 1980.</p> <p>20 Q. Okay. I understand. Did Commissioner</p> <p>21 Houston approve Plaintiffs' Exhibit 47?</p> <p>22 MR. NIX: I think he already --</p> <p>23 I'm sorry.</p>	<p>1 would be better served by having a person</p> <p>2 with a degree. And when I presented that</p> <p>3 as a rationale to the commissioner and</p> <p>4 everybody else, my boss, Otha Dillihay,</p> <p>5 everybody seemed to have bought off on</p> <p>6 that. Plus our discussions had already</p> <p>7 taken place as related to substitution with</p> <p>8 the JEC on several other different</p> <p>9 occasions.</p> <p>10 Q. But the JEC has not abolished the use of</p> <p>11 the substitution provision, has it?</p> <p>12 A. No. No. And this was not -- we didn't</p> <p>13 abolish any concept of the substitution.</p> <p>14 We just established a position that didn't</p> <p>15 call for substitution.</p> <p>16 Q. Well, you established a position that did</p> <p>17 not utilize substitution?</p> <p>18 A. That did not utilize substitution. Didn't</p> <p>19 call for it.</p> <p>20 Q. And the reason, again, that you told me is</p> <p>21 because you wanted someone with a degree?</p> <p>22 A. The position required a degree. And my --</p> <p>23 and my experience of knowing that you had a</p>

Page 166	Page 168
<p>1 position that was of high level, plus we</p> <p>2 had several classes already in the</p> <p>3 department that had substitution clauses on</p> <p>4 them that should not have -- should not</p> <p>5 have had substitution clauses that should</p> <p>6 have been degree required. And we talked</p> <p>7 about that in the job evaluation committee</p> <p>8 meetings.</p> <p>9 Q. Why could you not use experience --</p> <p>10 A. Experience --</p> <p>11 Q. -- in place of a degree to perform the job</p> <p>12 of Departmental Assistant Personnel</p> <p>13 Manager?</p> <p>14 A. I'm not saying you couldn't use</p> <p>15 experience. I'm not saying that. What I'm</p> <p>16 saying is that this particular position</p> <p>17 should have required a degree -- should</p> <p>18 require a degree, and any other large</p> <p>19 agency like this it should require a</p> <p>20 degree. And I'm quite sure you could look</p> <p>21 around every state agency and a comparable</p> <p>22 position like this you will find a degree</p> <p>23 requirement as the basics.</p>	<p>1 A. Well, it wasn't about taking advantage. I</p> <p>2 applied for the position.</p> <p>3 Q. And you were able to qualify for that</p> <p>4 position using the substitution provision,</p> <p>5 were you not?</p> <p>6 A. That's very true. Very true. So what are</p> <p>7 you saying?</p> <p>8 MR. NIX: No. Let's take a break.</p> <p>9 (Brief recess was taken.)</p> <p>10 Q. Mr. Ervin, when you were asking Marilyn for</p> <p>11 assistance regarding the Departmental</p> <p>12 Assistant Personnel Manager, I think you</p> <p>13 told me you had no idea that she intended</p> <p>14 to apply for the position; is that correct?</p> <p>15 A. I hadn't given it any thought. I'll put it</p> <p>16 that way.</p> <p>17 Q. At that time Marilyn was a departmental --</p> <p>18 excuse me -- a Personnel Specialist III;</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. That was her job title?</p> <p>22 A. That's correct.</p> <p>23 Q. And that was also the same job title held</p>
Page 167	Page 169
<p>1 Q. Your position when you applied for</p> <p>2 departmental personnel manager allowed</p> <p>3 substitution of experience for degree;</p> <p>4 correct?</p> <p>5 A. It required a master's. I had a bachelor's</p> <p>6 degree.</p> <p>7 Q. It required a master's?</p> <p>8 A. Yes.</p> <p>9 Q. And did you have a degree in the required</p> <p>10 field?</p> <p>11 A. The degree was not necessarily in the</p> <p>12 required field, but it was degree plus the</p> <p>13 experience that I had worked all of those</p> <p>14 years in other departments in other</p> <p>15 agencies. Obviously the substitution</p> <p>16 clause was part of that. That's correct.</p> <p>17 Q. Okay. But isn't it true that your position</p> <p>18 that you applied for when you became</p> <p>19 departmental personnel manager allowed</p> <p>20 substitution?</p> <p>21 A. It did.</p> <p>22 Q. And you took advantage of that substitution</p> <p>23 provision, did you not?</p>	<p>1 by Joan Owens and Lynn Hubbard; is that</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Is the Departmental Assistant Personnel</p> <p>5 Manager at a higher pay range than the</p> <p>6 Personnel Specialist III?</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Ervin, do you believe that you are</p> <p>9 fully competent to perform the job of</p> <p>10 Departmental Personnel Manager at the</p> <p>11 central office?</p> <p>12 A. Yes.</p> <p>13 Q. Do you believe that you are fully capable</p> <p>14 of performing the job of Departmental</p> <p>15 Personnel Manager at the central office?</p> <p>16 A. Yes.</p> <p>17 Q. Do you believe Marilyn Benson is competent</p> <p>18 to perform the job of Departmental</p> <p>19 Assistant Personnel Manager?</p> <p>20 A. Yes.</p> <p>21 Q. Do you believe Marilyn Benson is capable of</p> <p>22 performing the job of Departmental</p> <p>23 Assistant Personnel Manager?</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 170

1 A. Yes.  
 2 Q. Do you believe Joan Owens is competent to  
 3 perform the job of Departmental Assistant  
 4 Personnel Manager?  
 5 A. No.  
 6 Q. Why?  
 7 A. Because I think that position requires some  
 8 educational background that she doesn't  
 9 have.  
 10 Q. Such as?  
 11 A. Well, a basic degree.  
 12 Q. But what educational background does it  
 13 require that she doesn't have?  
 14 A. She doesn't have a degree at all.  
 15 Q. That's true. But what educational  
 16 background does it require that she doesn't  
 17 have?  
 18 A. It says a bachelor's degree in terms of  
 19 what the position entails -- I mean, what  
 20 it requires in public administration,  
 21 business or personnel administration,  
 22 whatever those requirements were on this  
 23 announcement.

Page 171

1 Q. Can you obtain that same competence that a  
 2 degree would give you through experience?  
 3 A. To a certain level. There are certain  
 4 functions that requires some insight, some  
 5 abilities to deal individually and  
 6 collectively with large agencies that, no,  
 7 she wouldn't have had that.  
 8 Q. Okay. Well, tell me what insights that she  
 9 would need to do that job that she could  
 10 only get by having a degree?  
 11 A. First of all, it's more than just me  
 12 sitting here naming some insights. The  
 13 general background of having matriculated  
 14 in somebody's institution of higher ed I  
 15 think makes a major difference in being  
 16 able to function in any environment of our  
 17 size and our scope. The complexity of this  
 18 job requires that a person has had  
 19 something other than the day-to-day  
 20 operations of a personnel office in a  
 21 facility.  
 22 Q. Can you obtain that same functionability  
 23 through experience?

Page 172

1 A. I'm not saying you couldn't obtain it  
 2 through experience. But I think we have  
 3 reached a point in our organizational lives  
 4 in mental health that we need people who  
 5 have educational pursuits that goes beyond  
 6 high school diplomas and goes beyond even  
 7 an associate's degree.  
 8 Q. But it's not your testimony, is it, that a  
 9 person could not obtain that  
 10 functionability through experience alone,  
 11 is it?  
 12 A. I'm not saying that that's impossible to  
 13 attain through functionability. I'm not  
 14 saying that at all. I'm just saying that  
 15 the desire was to have a degreed person and  
 16 be able to announce this position so that  
 17 we could get people who have gone beyond  
 18 the basic high school diploma.  
 19 Q. Okay. Could you have obtained competent  
 20 people to perform the work of Departmental  
 21 Assistant Personnel Manager based upon  
 22 experience alone?  
 23 A. I'm not saying I'm going to rule out

Page 173

1 everybody who has experience as not being  
 2 able to do this job and didn't have a  
 3 degree. But that was not what -- what I  
 4 prescribed to and it's not what the  
 5 commissioner wanted. So as a result we  
 6 went with what he wanted for the bottom  
 7 line. We talked about making the  
 8 department a better -- putting it in a  
 9 better posture to function better because  
 10 we had had -- we had closed three  
 11 facilities. We were going through all  
 12 kinds of ups and downs in terms of our  
 13 wages and everything else, and we needed  
 14 competent people who had at least basic  
 15 degrees to make things happen.  
 16 Q. But it is true that you can have competent  
 17 people to do the work that you need them to  
 18 do who are competent via experience alone?  
 19 A. At a certain level, sure. Certainly.  
 20 Q. And it is true that at the level of  
 21 Departmental Assistant Personnel Manager  
 22 you could obtain competent people who can  
 23 do that job via their experience alone?

Page 174	Page 176
<p>1 A. Yeah. But it's so much like saying we 2 don't -- we don't have any choices in this 3 matter. We had a choice and that was if we 4 wanted to increase our ability to organize, 5 to manage better, we needed to at least 6 have the basic degree requirement for that 7 particular job and many others like that 8 that have had substitution clauses that 9 should not have substitution clauses 10 anymore. A good example of that was the 11 wage and class study that was just done 12 where that particular group went through 13 and recommended changing a lot of those 14 that had substitution clauses. 15 Q. But at the time this position was 16 formulated and announced a wage and class 17 study had not been done; correct? 18 A. That's correct. 19 Q. And the wage and class study results that 20 have been given to the department have not 21 been adopted -- 22 A. That's correct. 23 Q. -- by the department?</p>	<p>1 Q. What would happen to that individual? 2 Would they qualify? 3 MR. NIX: You're talking about in 4 this job? 5 Q. In this job, Departmental Assistant 6 Personnel Manager. 7 A. What would have happened to the person? 8 What are you saying? 9 Q. A person with a degree in a subject other 10 than human resource management, business 11 administration or public administration 12 would not qualify to apply for this job; is 13 that correct? 14 A. I'm not saying they wouldn't qualify. But 15 obviously they didn't meet all of the 16 requirements that were set out there. 17 Q. They would not meet the qualifications, 18 then, contained in Plaintiffs' Exhibit 46, 19 would they? 20 A. No. 21 Q. A person with a history degree would not 22 meet the qualifications contained in 23 Plaintiffs' Exhibit 46, would they?</p>
Page 175	Page 177
<p>1 A. That's correct. 2 Q. In fact, when did you get the results of 3 the wage and class study? 4 A. November. 5 Q. November 2007? 6 A. Yes. 7 Q. But this position was created and 8 announced in -- the position of 9 Departmental Assistant Personnel Manager in 10 2005; correct? 11 A. That's correct. 12 Q. In 2005 did you know what the results were 13 going to be of the wage and class study 14 completed in November 2007? 15 A. No. No, I didn't know. 16 Q. In the position of Departmental Assistant 17 Personnel Manager were you looking for the 18 degree alone, or were you looking for a 19 combination of experience and degree? 20 A. Combination of experience and a degree. 21 Q. What if an individual did not have a degree 22 in the required field? 23 MR. NIX: I'm sorry, Flynn.</p>	<p>1 A. No. 2 Q. Do you think a person with a history degree 3 with a given level of experience in 4 personnel management would be competent of 5 performing the role of Departmental 6 Assistant Personnel Manager? 7 A. If that's what it calls for, you have to -- 8 you're looking for a person with that 9 particular degree; right? 10 Q. That's what Plaintiffs' Exhibit 46 calls 11 for; correct? 12 A. Yes. And what we have is the person that 13 was selected for this position had those 14 particular credentials. 15 Q. Mr. Ervin, isn't it true that even you as 16 departmental personnel manager would not 17 have qualified for this position under the 18 qualifications set forth in Plaintiffs' 19 Exhibit 46? 20 A. And, you know, I understand -- 21 MR. NIX: Just answer his 22 question. 23 Q. Isn't that true?</p>

Page 178

1 MR. NIX: Just answer his  
2 question. Don't comment.  
3 A. Based on this particular job specification,  
4 this particular announcement, no, I would  
5 not have according to what we were looking  
6 for.  
7 Q. But you're not saying that you, Henry  
8 Ervin, would be incapable or incompetent of  
9 performing this job, would you?  
10 A. Well, first of all, I would not be  
11 incapable. At least I have a degree. At  
12 least I have experience in major  
13 corporations and major hospitals. So, no,  
14 I wouldn't -- it's no way in the world I  
15 would think that.  
16 Q. That's right. Primarily because of the  
17 experience you have; correct?  
18 A. And that's -- And I'm not saying experience  
19 should not be a factor. I'm not saying  
20 that. It shouldn't be a factor in this  
21 particular position and several others in  
22 the department. It should be a combination  
23 of education and experience. I'm not

Page 179

1 trying to wipe out anybody who doesn't have  
2 experience. I've benefited from having  
3 experience.  
4 Q. You have, haven't you?  
5 A. Yes.  
6 Q. And you are where you are today because of  
7 your experience; correct?  
8 A. And education.  
9 Q. Well, your lifelong experience is in  
10 personnel management; correct?  
11 A. Pretty much.  
12 Q. Your education experience is in history?  
13 A. It's in education.  
14 Q. Well, history; correct?  
15 A. Education.  
16 MR. NIX: Let me object to the  
17 form of the question. He's  
18 also got education.  
19 Q. Right. We established --  
20 A. Public administration. That was --  
21 Q. We established you didn't have a degree at  
22 Nova?  
23 A. That's correct.

Page 180

1 Q. Did the job evaluation committee approve  
2 the -- And this is a different question. I  
3 I don't want you to think I'm asking you  
4 the same thing again, because I asked you  
5 earlier about these exhibits. But this  
6 question is a general question. Did the  
7 job evaluation committee approve the  
8 specifications for Departmental Assistant  
9 Personnel Manager?  
10 A. I think we've answered that already, too,  
11 and I told you that I wasn't even certain  
12 that the JEC, job evaluation committee, was  
13 privy to even getting that. So I don't  
14 recall even presenting it to them. I  
15 presented the idea of the position. The  
16 commissioner was at one meeting where that  
17 whole concept came up. And so I don't  
18 recall whether that position was even  
19 presented --  
20 Q. In the --  
21 A. -- from a job spec standpoint.  
22 Q. Right. And that's what I'm trying to get  
23 at. Did the job evaluation committee know

Page 181

1 that the substitution provision would not  
2 be included in the specifications for  
3 Departmental Assistant Personnel Manager?  
4 A. Yes.  
5 Q. They did?  
6 A. Yes.  
7 Q. And when were they informed of that?  
8 A. I'm almost certain it was at the same time  
9 we presented the idea to fill the position.  
10 Q. Would that be reflected in any job  
11 evaluation committee minutes?  
12 A. It should be. I know discussion was  
13 reflected in the minutes regarding their  
14 position and it was approved in that  
15 particular -- in those minutes.  
16 Q. In fact, if the job evaluation committee  
17 did approve the specification for the  
18 Departmental Assistant Personnel Manager  
19 position, that approval should be reflected  
20 in the committee minutes; correct?  
21 A. And it's there.  
22 Q. Do you know it's there?  
23 A. The approval for those particular positions

Page 182

1 that was presented that day?

2 Q. The approval for the specification.

3 MR. NIX: He's already answered

4 that.

5 A. The specification I can't say that. I told

6 you I wasn't sure that that was even

7 presented.

8 Q. And that's why I asked my question. If

9 they did approve the specification, should

10 that be in the committee meeting minutes?

11 A. Well, it could have been -- should have

12 been in there.

13 Q. And if they approved the omission of a

14 substitution provision, should that be in

15 the committee minutes?

16 A. Approve the omission?

17 Q. Correct.

18 MR. NIX: He's already testified

19 it wasn't. I'm sorry. Go

20 ahead.

21 MR. MOZINGO: He didn't testify to

22 this question.

23 Q. The lack, omission, or not using the

Page 183

1 substitution provision, if that was

2 approved with respect to the position of

3 Departmental Assistant Personnel Manager by

4 the job evaluation committee, should it be

5 in the committee's minutes?

6 A. The fact that it was a new position we were

7 talking about creating, it wasn't brought

8 to the attention that we're going to be

9 creating this new position and we're not

10 going to use substitution as a subject

11 matter. In other words, we were creating a

12 new position. So if there had been

13 substitution, we would have gone back to

14 that JEC and said we want to approve the

15 substitution to hire Joe Blow or Sam

16 whoever. But that was not the case.

17 Q. Well, and it's a fact that most of your

18 existing job specifications for personnel

19 manager or administrator contained a

20 substitution provision; correct?

21 A. I don't deny that at all. I don't know

22 which ones do and which ones doesn't, you

23 know. But I know a lot of them contain

Page 184

1 that.

2 Q. Right. A lot of personnel manager

3 positions contain the substitution

4 provision?

5 A. Okay.

6 Q. Correct?

7 A. That's correct.

8 Q. And so if you're going to create a new

9 personnel manager position that does not

10 contain the substitution provision,

11 wouldn't you inform the job evaluation

12 committee?

13 A. And I'm almost certain that they were

14 informed because they had to approve --

15 because they approved the position.

16 Q. Well, then let me make -- Let me ask it

17 this way to make sure you and I are talking

18 about the same thing. Can the job

19 evaluation committee approve the creation

20 of a position without considering the

21 qualification for the position?

22 MR. NIX: I'm sorry, Flynn. Would

23 you say that again one more

Page 185

1 time? I apologize.

2 Q. Can the job evaluation committee approve

3 the creation of a position without

4 considering and approving the

5 qualifications for the position?

6 A. I'm quite sure they could do that. But did

7 they do it in this case? I'm not sure that

8 that was done. I'm not even sure that they

9 didn't see the job specs.

10 Q. Okay. In getting back to the question I

11 was asking earlier. If they did approve

12 the job specs and if they did approve the

13 omission of substitution from the job

14 specs, should that be reflected in their

15 minutes?

16 A. Yeah. Possibly should be.

17 Q. Who prepared the minutes for the job

18 evaluation committee?

19 MR. NIX: Are you referring to

20 specific -- a specific set of

21 minutes? You know, different

22 people --

23 Q. Well, who generally recorded and prepared



Deposition of Henry E. Ervin

June 10, 2008

Page 186	Page 188
<p>1 the minutes for the job evaluation</p> <p>2 committee?</p> <p>3 A. Well, Marilyn usually do the minutes of the</p> <p>4 job evaluation committee.</p> <p>5 Q. And that was one of her responsibilities;</p> <p>6 correct?</p> <p>7 A. That was one of her responsibilities.</p> <p>8 Q. And her responsibility would be to prepare</p> <p>9 complete and accurate minutes; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Why did the position of -- Strike that.</p> <p>12 Why did the notice for the position of</p> <p>13 Departmental Assistant Personnel Manager</p> <p>14 contain a statement of preferences?</p> <p>15 A. It was not uncommon to have preferences</p> <p>16 listed in announcements.</p> <p>17 Q. Did announcements for personnel management</p> <p>18 jobs commonly contain preferences?</p> <p>19 MR. NIX: I'm sorry. I apologize,</p> <p>20 Flynn. Do you mind repeating</p> <p>21 that?</p> <p>22 Q. Did announcements for personnel management</p> <p>23 jobs commonly contain preferences?</p>	<p>1 could get the fullness of the education and</p> <p>2 the experience from a person who actually</p> <p>3 had the kind of experience that we felt</p> <p>4 that this position needed. I don't look at</p> <p>5 education from that -- from that being a</p> <p>6 negative. I thought that was a positive.</p> <p>7 Q. Is experience a positive?</p> <p>8 A. Sure, it's a positive.</p> <p>9 Q. Can experience be a positive on its own</p> <p>10 merits without considering education?</p> <p>11 MR. NIX: Do you mind putting that</p> <p>12 in a specific frame of</p> <p>13 reference? I mean, that's a</p> <p>14 pretty --</p> <p>15 Q. Can personnel experience be a positive in</p> <p>16 and of itself without an education?</p> <p>17 MR. NIX: To what position do you</p> <p>18 mean? Do you mean to this</p> <p>19 position?</p> <p>20 MR. MOZINGO: To this position or</p> <p>21 any personnel management</p> <p>22 position.</p> <p>23 A. I think I said earlier that I thought the</p>
Page 187	Page 189
<p>1 A. I don't recall. I'd have to go back and</p> <p>2 look at some of the announcements.</p> <p>3 Q. Why was a master's degree given as a</p> <p>4 preference for the job of Departmental</p> <p>5 Assistant Personnel Manager?</p> <p>6 A. I didn't see that as being a hindrance to</p> <p>7 filling the position. And I saw that as</p> <p>8 being quite appropriate.</p> <p>9 Q. Did you see that as something that would</p> <p>10 discourage people without a master's from</p> <p>11 applying?</p> <p>12 A. No.</p> <p>13 Q. Do you think it could discourage people</p> <p>14 without a master's from applying?</p> <p>15 A. No.</p> <p>16 Q. Do you think if the position or the</p> <p>17 announcement had contained a substitution</p> <p>18 provision it would have discouraged people</p> <p>19 with degrees from applying?</p> <p>20 A. No.</p> <p>21 Q. So why did it contain a preference for a</p> <p>22 master's degree?</p> <p>23 A. Because, you know, I felt that maybe you</p>	<p>1 combination of the education and the</p> <p>2 experience was the approach that we were</p> <p>3 taking, and that's the approach that I</p> <p>4 think we're going to be taking in the</p> <p>5 future.</p> <p>6 Q. And you said that and I appreciate that.</p> <p>7 A. Yes.</p> <p>8 Q. But my question is, though, in this</p> <p>9 position can experience in and of itself</p> <p>10 without a degree be a positive?</p> <p>11 A. It can be a positive.</p> <p>12 Q. Why did this position give a preference for</p> <p>13 work experience in the government public</p> <p>14 sector?</p> <p>15 A. We are a government public sector. We are</p> <p>16 health care providers. So I didn't see why</p> <p>17 that shouldn't be there. All of those</p> <p>18 things we -- that's us. That's mental</p> <p>19 health.</p> <p>20 Q. Were the qualifications for this position</p> <p>21 designed to -- Strike that.</p> <p>22 Were the qualifications for this</p> <p>23 position intended to prohibit Joan Owens</p>

Page 190	Page 192
<p>1 and Lynn Hubbard from applying for the</p> <p>2 position?</p> <p>3 A. No.</p> <p>4 Q. Were the qualifications intended to make</p> <p>5 Marilyn Benson the preeminent candidate for</p> <p>6 the position?</p> <p>7 A. No.</p> <p>8 Q. Was this position designed for Marilyn</p> <p>9 Benson?</p> <p>10 A. No.</p> <p>11 Q. Was Marilyn Benson hired for this position</p> <p>12 in order to keep a black person or</p> <p>13 African-American, whatever term you want to</p> <p>14 use, in management authority inside the</p> <p>15 Department of Mental Health?</p> <p>16 A. I don't believe the appointing authority,</p> <p>17 who is the commissioner, had that in mind</p> <p>18 when he approved hiring Marilyn Benson.</p> <p>19 Q. Did you have that in mind when this</p> <p>20 position was created?</p> <p>21 A. No, I did not. But I don't hire.</p> <p>22 Q. But you recommended this position be</p> <p>23 created?</p>	<p>1 A. There were other people who met the minimum</p> <p>2 qualifications that were not of</p> <p>3 African-American descent.</p> <p>4 Q. Well, all qualified candidates were</p> <p>5 interviewed; correct?</p> <p>6 A. Who met the requirements for all -- all of</p> <p>7 the requirements for the positions. But</p> <p>8 there were people who met the minimum</p> <p>9 qualifications is what I'm saying to you</p> <p>10 and they were not African-Americans.</p> <p>11 Q. Mr. Ervin, are you sure that all qualified</p> <p>12 candidates were interviewed for the</p> <p>13 position?</p> <p>14 A. All the qualified candidates were</p> <p>15 interviewed. We were talking about minimum</p> <p>16 qualifications that they have. There were</p> <p>17 several had minimum qualifications. That's</p> <p>18 all I was saying. And two of those were</p> <p>19 not African-Americans.</p> <p>20 Q. Are you sure that the two that you're</p> <p>21 talking about had the minimum</p> <p>22 qualifications?</p> <p>23 A. As far as -- I could be wrong, but that's</p>
Page 191	Page 193
<p>1 A. I did.</p> <p>2 Q. And you recommended that the qualifications</p> <p>3 for this position be what they are?</p> <p>4 A. That's correct.</p> <p>5 Q. And you made those recommendations without</p> <p>6 the intent or motive to place an</p> <p>7 African-American or keep an</p> <p>8 African-American in a management position</p> <p>9 inside the central personnel office?</p> <p>10 A. That's not the reason this position was</p> <p>11 established at all period.</p> <p>12 Q. Isn't it true that only -- the only</p> <p>13 qualified candidates for this position as</p> <p>14 found by the Department of Mental Health</p> <p>15 were African-Americans?</p> <p>16 A. Those individuals who were interviewed for</p> <p>17 this position.</p> <p>18 Q. Weren't all qualified candidates</p> <p>19 interviewed?</p> <p>20 A. All qualified candidates were interviewed.</p> <p>21 Q. And isn't it a fact that the only qualified</p> <p>22 candidates for this position were</p> <p>23 African-American?</p>	<p>1 what I thought anyway.</p> <p>2 Q. Did Otha Dillihay approve the job</p> <p>3 specifications for the position of</p> <p>4 Departmental Assistant Personnel Manager?</p> <p>5 A. Yes.</p> <p>6 Q. Did Otha Dillihay approve the omission of</p> <p>7 the substitution provision in those</p> <p>8 specifications?</p> <p>9 A. That was discussed with Mr. Dillihay on</p> <p>10 several occasions.</p> <p>11 Q. I understand. Did he approve it?</p> <p>12 A. He approved the job specs as we presented</p> <p>13 to him.</p> <p>14 Q. And the job specs that you presented to him</p> <p>15 omitted the substitution provision?</p> <p>16 A. It did not have substitution as part of the</p> <p>17 requirement.</p> <p>18 Q. Did Otha Dillihay approve the announcement</p> <p>19 that is contained in Plaintiffs' Exhibit</p> <p>20 47?</p> <p>21 A. He was part of the approval process along</p> <p>22 with the commissioner.</p> <p>23 Q. Did he approve --</p>



Page 194

1 A. Yes.  
 2 Q. -- Plaintiffs' Exhibit 47?  
 3 A. Yes.  
 4 Q. Is the job evaluation committee supposed to  
 5 approve the qualifications for a position  
 6 before it goes to the commissioner for  
 7 approval?  
 8 MR. NIX: Object to the form.  
 9 A. I would say most of the positions that go  
 10 through the job evaluation committee will  
 11 go to the commissioner for approval and  
 12 then there are some that the commissioner  
 13 just can approve himself.  
 14 Q. Which ones can he approve himself?  
 15 A. Any that he appoints directly.  
 16 Q. And can you explain that to me? I don't  
 17 know what you mean.  
 18 A. Well, you have associate commissioners that  
 19 work at the pleasure. They don't have to  
 20 go before the job evaluation committee.  
 21 Q. Thank you for that distinction.  
 22 The position of Departmental Assistant  
 23 Personnel Manager, did he appoint the

Page 195

1 person to that position directly?  
 2 A. As the appointing authority, he's the only  
 3 one who can.  
 4 Q. He did not appoint Marilyn Benson to the  
 5 position without the benefit of the  
 6 application and interview process, did he?  
 7 A. That's correct.  
 8 Q. Right. Marilyn Benson had to apply and had  
 9 to go through the interview process?  
 10 A. That's correct.  
 11 Q. So using that as a distinction, the  
 12 position of Departmental Assistant  
 13 Personnel Manager is not a direct  
 14 appointment position, is it?  
 15 A. No. In other words, the recommendation has  
 16 to be made by the panel.  
 17 Q. Correct.  
 18 MR. NIX: Just wait for a  
 19 question.  
 20 Q. Right. That's my understanding.  
 21 A. Yes.  
 22 MR. NIX: I object to the form.  
 23 Q. Were the qualifications for the position of

Page 196

1 Departmental Assistant Personnel Manager  
 2 required to be approved by the job  
 3 evaluation committee before going to the  
 4 commissioner?  
 5 A. The minutes indicated that --  
 6 MR. NIX: He's asking you whether  
 7 or not it was required.  
 8 Q. Right. I've asked you about the minutes.  
 9 We've covered the minutes.  
 10 MR. NIX: He's asking you whether  
 11 the commissioner could simply  
 12 approve the spec.  
 13 A. Sure, he can.  
 14 Q. No. That's not what I'm asking you. I'm  
 15 asking you were the qualifications required  
 16 to go through the job evaluation committee  
 17 before being presented to the commissioner?  
 18 MR. NIX: Let me object to the  
 19 form of the question. That's  
 20 really a question of law.  
 21 But --  
 22 Q. I'm asking to your knowledge, Mr. Ervin.  
 23 A. To my knowledge, the process is that the

Page 197

1 job evaluation committee makes  
 2 recommendations to the commissioner.  
 3 Q. And to your knowledge of the process, did  
 4 that process require the qualifications for  
 5 the Departmental Assistant Personnel  
 6 Manager to be reviewed and approved by the  
 7 job evaluation committee before going to  
 8 the commissioner?  
 9 MR. NIX: Again, let me object to  
 10 the form of the question  
 11 because that is a question of  
 12 law.  
 13 Q. You can answer.  
 14 A. I don't think there was a particular  
 15 requirement that you would note from any  
 16 policy or -- but maybe just from the  
 17 guidelines whereas that would be approved  
 18 by the job evaluation committee and then go  
 19 to the commissioner.  
 20 Q. Well, was that the normal practice that the  
 21 qualifications go through the job  
 22 evaluation committee and be approved before  
 23 being sent to the commissioner?

Page 198

1 MR. NIX: Let me object to the  
2 form of the question.

3 A. You know, we didn't have very many new  
4 positions that we were establishing, so the  
5 process was really one of positions that we  
6 would be approving to be just initiated as  
7 filling, as hiring.

8 Q. Okay. But what was the process? You've  
9 mentioned the process twice. What was the  
10 process for the creation of a new job?

11 MR. NIX: I object to the form of  
12 the question. Again, that's a  
13 question of law.

14 MR. MOZINGO: I'm using his words.

15 A. In other words, the -- we would present the  
16 job to the committee.

17 Q. The job evaluation committee?

18 A. The job evaluation committee. They would  
19 review it and then it would go to the  
20 commissioner for his approval.

21 Q. And would they review it, that process?  
22 Would that process include them reviewing  
23 the qualifications or specifications?

Page 200

1 A. Yes.

2 Q. When he approved it, did you tell him that  
3 the qualifications had been approved by the  
4 job evaluation committee?

5 A. I think he knew that it had been -- had  
6 gone through the job evaluation committee  
7 and had been approved by the job evaluation  
8 committee.

9 Q. You said you think. Do you think he  
10 understood that the qualifications for the  
11 job had been approved by the job evaluation  
12 committee?

13 MR. NIX: Are you asking him  
14 whether it's his understanding  
15 that the commissioner approved  
16 the qualifications or required  
17 the qualifications before the  
18 job evaluation committee  
19 considered the position, or  
20 are you asking whether instead  
21 the job evaluation committee  
22 approved the qualifications  
23 and the position or whatever

Page 199

1 MR. NIX: Object to the form of  
2 the question. That's a  
3 question of law.

4 A. Yeah. It could be that way.

5 Q. I just want to make sure I understand. In  
6 this case for Departmental Assistant  
7 Personnel Manager, was the process that  
8 you've testified to -- did that process  
9 require the qualifications for the position  
10 to be approved by the job evaluation  
11 committee before going to the commissioner?

12 MR. NIX: Object to the form.

13 It's a question of law.

14 A. And I still say it was a combination of all  
15 of that. In other words, the commissioner  
16 had had privilege to see the job specs, see  
17 the announcement, all of that before the  
18 job evaluation committee because we were  
19 establishing this new position anyway. And  
20 I knew that we had to have his approval in  
21 order to get that done.

22 Q. Well, did the commissioner approve the  
23 qualifications for this position?

Page 201

1 before the commissioner  
2 required the --

3 MR. MOZINGO: I've already asked  
4 him that. He told me what he  
5 thought the commissioner  
6 thought. I'm asking --

7 MR. NIX: So what's your  
8 question?

9 Q. I'm asking -- You told me what you thought  
10 the commissioner thought. And the  
11 commissioner will have an opportunity to  
12 speak for himself. I'm not trying to trick  
13 you in any way because I'm going to depose  
14 him and he can tell me what he knew. But  
15 you were telling me what you thought he  
16 knew or believed. And my question is, do  
17 you think that he believed the  
18 qualifications had already been approved by  
19 the job evaluation committee when he  
20 approved them?

21 MR. NIX: You mean before he  
22 approved them?

23 MR. MOZINGO: Before he approved

Deposition of Henry E. Ervin

June 10, 2008

Page 202

1 them.  
 2 A. I would think so.  
 3 Q. Do you think he'd want to know that?  
 4 A. Yeah.  
 5 Q. Do you think that was important to him?  
 6 A. I believe so.  
 7 Q. Do you believe that was part of the  
 8 requirement of presenting it to him for  
 9 approval?  
 10 MR. NIX: I object to the form.  
 11 That's a question of law.  
 12 A. I think as long as he knew that that  
 13 position had been approved by the job  
 14 evaluation committee and I think even him  
 15 having the knowledge that he had regarding  
 16 this position, it wasn't any doubt in his  
 17 mind that everybody didn't agree that this  
 18 was the right job to have.  
 19 Q. Okay. Did everybody agree?  
 20 A. I didn't have any opposers.  
 21 Q. And when you say everybody or you didn't  
 22 have any opposition, who all was aware or  
 23 who all were aware? I don't know the

Page 203

1 proper English there. You majored in  
 2 education. You tell me. Who all was aware  
 3 of the qualifications for the position of  
 4 Departmental Assistant Personnel Manager  
 5 before it was announced?  
 6 A. You mean other than the -- Mr. Dillihay, my  
 7 boss, the commissioner, June Lynn.  
 8 Q. Marilyn Benson was aware too; right?  
 9 A. Mike Mathis. All of those individuals were  
 10 aware.  
 11 Q. Marilyn Benson was aware too; right?  
 12 A. Yeah. I believe Marilyn was aware.  
 13 Q. Mr. Ervin, tell me about any conversations  
 14 you had with Joan Owens regarding this  
 15 position prior to it being filled.  
 16 A. There was only one conversation that we've  
 17 had and that was in my office. Could have  
 18 been after a staff meeting or after she had  
 19 had a discussion with June Lynn regarding  
 20 the substitution clause. And when she came  
 21 in the office, she wanted to know if I  
 22 would change the clause, and I told her  
 23 that I didn't believe that the job would be

Page 204

1 served if we didn't have the educational  
 2 requirement as it was and leave it like it  
 3 was. And she said that she felt that we  
 4 were doing that because she was a white  
 5 female. And I just told her how  
 6 disappointed I was in her for even thinking  
 7 that way and how sad it made me.  
 8 Q. When did that conversation occur?  
 9 A. I don't remember the exact date, but it  
 10 was -- I would say prior to --  
 11 MR. NIX: Well, if you don't know,  
 12 don't guess; okay?  
 13 Q. Would it have been approximately around the  
 14 time that the position was first announced  
 15 in September 2005?  
 16 MR. NIX: Object to the form. He  
 17 already said he didn't know.  
 18 A. No. That was prior to that.  
 19 Q. Well, if Joan Owens testified that she went  
 20 and approached you either on the day the  
 21 position was announced or within a few days  
 22 of that announcement, would you dispute  
 23 that?

Page 205

1 A. This was the day that I announced to the  
 2 personnel staff that we were announcing  
 3 this position.  
 4 Q. All right. And was that the same day that  
 5 Plaintiffs' Exhibit 47 is dated?  
 6 A. No.  
 7 Q. Would it have been the same week of  
 8 Plaintiffs' Exhibit 47?  
 9 A. No.  
 10 Q. Would it have been the same month of  
 11 Plaintiffs' Exhibit 47?  
 12 A. No.  
 13 Q. Are you saying that you made a separate or  
 14 a specific announcement to the central  
 15 office about the creation of the position?  
 16 A. About the establishment of the position and  
 17 the fact that it would be announced.  
 18 Q. And that occurred prior to the issuance of  
 19 Plaintiffs' Exhibit 47; correct?  
 20 A. Yes.  
 21 Q. During that announcement, did you inform  
 22 the central office personnel that the  
 23 qualifications for the position would not

Deposition of Henry E. Ervin

June 10, 2008

Page 206	Page 208
<p>1 allow substitution?</p> <p>2 A. That was asked of me.</p> <p>3 Q. It was asked of you?</p> <p>4 A. Yes.</p> <p>5 Q. During the meeting?</p> <p>6 A. Yes.</p> <p>7 Q. And what did you say?</p> <p>8 A. I said no.</p> <p>9 Q. Was that asked of you by Ms. Owens?</p> <p>10 A. No.</p> <p>11 Q. Was it asked by Ms. Hubbard?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have any conversation with Joan</p> <p>14 Owens in her office regarding -- I'm</p> <p>15 sorry -- in your office regarding the</p> <p>16 position?</p> <p>17 A. Yes.</p> <p>18 Q. How many did you have?</p> <p>19 A. That's the only one I remember other than</p> <p>20 the meeting that we had where --</p> <p>21 Q. Well, do you remember --</p> <p>22 A. -- I made the announcement.</p> <p>23 Q. Do you remember Joan Owens making any</p>	<p>1 A. I don't really remember using that</p> <p>2 particular expletive. I'm not saying that</p> <p>3 I didn't say something like that. But I</p> <p>4 was talking about the disappointment that I</p> <p>5 was feeling that she truly felt that I was</p> <p>6 discriminating against her because of that</p> <p>7 job announcement and -- I mean, because of</p> <p>8 the creation of the job without a</p> <p>9 substitution clause.</p> <p>10 Q. Do you think that it was unreasonable for</p> <p>11 her to feel like she was being</p> <p>12 discriminated against?</p> <p>13 A. Yes.</p> <p>14 Q. Why?</p> <p>15 A. Why? Because --</p> <p>16 MR. NIX: Let me just object to</p> <p>17 the form because it calls for</p> <p>18 him to speculate about someone</p> <p>19 else's mental operations. And</p> <p>20 I will tell you, Henry, don't</p> <p>21 speculate about what somebody</p> <p>22 else thought; okay?</p> <p>23 MR. MOZINGO: Well, he said that</p>
Page 207	Page 209
<p>1 statements or asking any questions in the</p> <p>2 meeting where you contend you announced the</p> <p>3 position?</p> <p>4 A. I don't remember Joan asking any questions</p> <p>5 in the meeting. I remember Lynn Hubbard</p> <p>6 asking questions in the meeting.</p> <p>7 Q. And that was my question about</p> <p>8 conversations with Joan Owens. You only</p> <p>9 had one conversation with Joan Owens?</p> <p>10 A. Yes.</p> <p>11 Q. And would that have been in your office?</p> <p>12 A. Yes.</p> <p>13 Q. Would that have been on the day or a few</p> <p>14 days after the job was announced as</p> <p>15 reflected on Plaintiffs' Exhibit 47?</p> <p>16 A. I think it was way before that.</p> <p>17 Q. Way before that?</p> <p>18 A. Yes.</p> <p>19 Q. Is that the only conversation you ever had</p> <p>20 with Joan Owens about the position?</p> <p>21 A. Regarding this position, yes.</p> <p>22 Q. In that conversation did you tell Joan</p> <p>23 Owens that you were tired of her shit?</p>	<p>1 he thought it was unreasonable</p> <p>2 for her to feel that way.</p> <p>3 Q. And I want to know why you, Henry Ervin,</p> <p>4 think it's unreasonable for her to feel</p> <p>5 that way.</p> <p>6 MR. NIX: I think he can say that.</p> <p>7 MR. MOZINGO: That's what I asked.</p> <p>8 A. Because Henry Ervin felt very strongly that</p> <p>9 he didn't discriminate against anybody and</p> <p>10 has never discriminated against anybody.</p> <p>11 Q. And you would think it would be</p> <p>12 unreasonable for someone else to feel</p> <p>13 like -- to feel differently?</p> <p>14 A. Well, I guess maybe I felt that way because</p> <p>15 that's the first time I've ever had anybody</p> <p>16 to even say that I remotely discriminated</p> <p>17 against them.</p> <p>18 Q. With, have you ever felt like someone has</p> <p>19 discriminated against you?</p> <p>20 A. As it relates to employment?</p> <p>21 Q. Yes, sir.</p> <p>22 A. Not particularly when I applied for</p> <p>23 positions. It's not very many that I</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 210

1 applied for that I didn't get.  
 2 Q. Have you ever felt like anyone has  
 3 discriminated against you because of your  
 4 race?  
 5 A. Of course. I know that. I know that.  
 6 Q. And you know it's not a good feeling?  
 7 A. I know that too.  
 8 Q. And it would not be unreasonable for you,  
 9 Henry Ervin, if you felt discriminated  
 10 against by someone to tell that person how  
 11 you felt, would it?  
 12 MR. NIX: I object to this. I  
 13 mean, that's pure  
 14 speculation. And I would say  
 15 don't speculate about  
 16 anything, Henry. I object to  
 17 the form of the question.  
 18 Just asking for absolute pure  
 19 speculation.  
 20 Q. I don't want you to speculate.  
 21 A. And I don't want to speculate.  
 22 Q. And I want to know how you feel. That's  
 23 what I'm asking.

Page 211

1 MR. NIX: Do you mind asking the  
 2 question again?  
 3 Q. Mr. Ervin, did you tell Joan Owens words to  
 4 the effect that as uneducated as y'all are  
 5 how would you expect me to do this or why  
 6 would you expect me to do this?  
 7 A. I have never used that term to Joan Owens.  
 8 Q. You've never called her uneducated?  
 9 A. Uneducated? Never in my life.  
 10 Q. Have you ever called her a wasp?  
 11 A. Never in my life.  
 12 Q. Never?  
 13 A. Never.  
 14 Q. You're sure about that?  
 15 A. I'm sure.  
 16 Q. What did you tell Joan Owens in that  
 17 meeting?  
 18 A. Well, first of all, I expressed my  
 19 disappointment, you know. Like I said, I'm  
 20 not saying that I didn't use an expletive.  
 21 Could have been damn. Could have been  
 22 shit. I'm not sure. But it was at the  
 23 point that she mentioned that to me that I

Page 212

1 was so hurt that she said that she felt  
 2 that I had discriminated against her that  
 3 that really disturbed me. So that's what I  
 4 was reacting to.  
 5 Q. And when you expressed your disappointment  
 6 to her, what do you recall saying to her?  
 7 A. I think I just said that.  
 8 Q. Well, you told me you expressed your  
 9 disappointment, but I'm trying to ask what  
 10 do you specifically -- what, if anything,  
 11 do you specifically recall saying to her?  
 12 MR. NIX: I object to the form.  
 13 Asked and answered.  
 14 A. First of all --  
 15 MR. NIX: Just respond to his  
 16 question. That's all.  
 17 A. The only thing that I can -- that I  
 18 remember saying to her was that I couldn't  
 19 change the job specs and it had already  
 20 been approved by everybody else.  
 21 Q. Is that why you couldn't change the job  
 22 specs because it had been approved by  
 23 everyone else?

Page 213

1 A. Plus I agreed with it. I agreed with the  
 2 job specs.  
 3 Q. Were you preparing Marilyn Benson to  
 4 replace you when you leave?  
 5 A. No.  
 6 Q. Before Marilyn Benson was ever received --  
 7 Well, let me put it this way: The position  
 8 of assistant department personnel  
 9 management was a promotion for Ms. Benson,  
 10 was it not?  
 11 A. Yes.  
 12 Q. Were you ever preparing Ms. Benson for that  
 13 promotion?  
 14 A. No.  
 15 MR. NIX: What promotion? The  
 16 assistant personnel --  
 17 MR. MOZINGO: Right. He just said  
 18 it was a promotion.  
 19 Q. And you're sure about that?  
 20 A. I'm very sure.  
 21 Q. Now, let me ask you this, Mr. Ervin. I  
 22 understand your feeling about education.  
 23 I've asked you and you've told me about

Deposition of Henry E. Ervin

June 10, 2008

Page 214	Page 216
<p>1 that. And I'm not asking about your</p> <p>2 feelings about education. I just mean</p> <p>3 the -- what I'm asking about is the ability</p> <p>4 to do the job. You have cognizance of Joan</p> <p>5 Owens' experience; correct?</p> <p>6 A. Yes.</p> <p>7 Q. In fact, you would have been the person who</p> <p>8 gave her her appraisals; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And you were the person that rated her job</p> <p>11 performance; correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And the same applies for Lynn Hubbard;</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. So you have cognizance of her experience?</p> <p>17 A. Yes.</p> <p>18 Q. Given your knowledge of their experience,</p> <p>19 are Joan Owens and Lynn Hubbard -- or are</p> <p>20 Joan Owens and -- I think I asked it that</p> <p>21 way. Are Joan Owens and Lynn Hubbard, are</p> <p>22 either of them capable of performing the</p> <p>23 duties and responsibilities of the</p>	<p>1 that they have strengths --</p> <p>2 individual strengths, but not</p> <p>3 that --</p> <p>4 Q. Notwithstanding the objection of your</p> <p>5 attorney, we've spent a lot of time today</p> <p>6 talking about the qualifications here and</p> <p>7 we've spent time today talking about this</p> <p>8 preappraisal and how it was arrived at and</p> <p>9 its purpose. So my question to you,</p> <p>10 Mr. Ervin, is look at this, look at</p> <p>11 Plaintiffs' Exhibit 46 and look at</p> <p>12 Plaintiffs' Exhibit 48 and tell me for the</p> <p>13 work performed or the responsibilities,</p> <p>14 tell me which ones Joan Owens and/or Lynn</p> <p>15 Hubbard were capable of performing and</p> <p>16 which ones they weren't.</p> <p>17 MR. NIX: Again, let me object to</p> <p>18 the form in that you are</p> <p>19 directing him to two documents</p> <p>20 that have black and white --</p> <p>21 Q. Look at Plaintiffs' Exhibit --</p> <p>22 MR. NIX: Excuse me. Let me</p> <p>23 finish my objection, please.</p>
Page 215	Page 217
<p>1 assistant personnel manager?</p> <p>2 A. In my opinion the two people you mentioned,</p> <p>3 Joan Owens and Lynn Hubbard, both have</p> <p>4 capabilities to do certain parts of this</p> <p>5 job.</p> <p>6 Q. What parts are they capable of doing?</p> <p>7 A. Lynn has certain strengths. Joan has</p> <p>8 certain strengths.</p> <p>9 Q. And what are they? What are those</p> <p>10 strengths that they are capable of</p> <p>11 performing for this job? And if you want,</p> <p>12 take the spec sheet and tell me or take the</p> <p>13 preappraisal for Marilyn and tell me which</p> <p>14 one of those they're capable of</p> <p>15 performing. And likewise which one that</p> <p>16 they're not capable of performing.</p> <p>17 MR. NIX: I would object to your</p> <p>18 limiting him to any written</p> <p>19 document. I don't think he</p> <p>20 has said anything specific</p> <p>21 about any document. He has</p> <p>22 simply said in a general sense</p> <p>23 at this point that he believes</p>	<p>1 In that you're limiting him to</p> <p>2 two documents that have black</p> <p>3 and white lettering on them</p> <p>4 that have the job</p> <p>5 qualifications, the specs, the</p> <p>6 kind of work, the knowledge,</p> <p>7 skills and abilities and</p> <p>8 you're not allowing him in</p> <p>9 that question to state other</p> <p>10 things that he believes they</p> <p>11 would not be capable of</p> <p>12 doing. Like some things he's</p> <p>13 already mentioned in this</p> <p>14 deposition. I object to the</p> <p>15 form of the question in that</p> <p>16 sense. I think it's unfair,</p> <p>17 Flynn, for you to limit him to</p> <p>18 documents -- those two</p> <p>19 documents. I think you can</p> <p>20 ask him the question, but I</p> <p>21 think it's unfair to limit him</p> <p>22 to the documents. In other</p> <p>23 words, I guess I'm saying I</p>



Page 218	Page 220
<p>1 think it's okay to say what</p> <p>2 limitations they would have on</p> <p>3 the job. But in terms of</p> <p>4 limiting him to those two</p> <p>5 documents, I think it's a</p> <p>6 flawed question and I object</p> <p>7 to it.</p> <p>8 MR. MOZINGO: Well, your objection</p> <p>9 is noted and --</p> <p>10 MR. NIX: Are you going to rule on</p> <p>11 it now?</p> <p>12 MR. MOZINGO: Yes, I'm going to</p> <p>13 rule on it and it's denied.</p> <p>14 Very well argued.</p> <p>15 MR. NIX: Would you state your</p> <p>16 question again and I'll state</p> <p>17 a very simple objection.</p> <p>18 Q. And your very competent and very, very</p> <p>19 capable attorney can come back and ask you</p> <p>20 about any of this he wants if he thinks I'm</p> <p>21 being unfair. But I want you to look first</p> <p>22 at Plaintiffs' Exhibit 46, which lists the</p> <p>23 work performed, and tell me of those eight</p>	<p>1 the same reasons previously</p> <p>2 noted.</p> <p>3 Q. And take all the time you need, please.</p> <p>4 A. Do you want to take the first two bullets?</p> <p>5 Q. Yes, sir.</p> <p>6 A. I don't think Joan nor Lynn would be able</p> <p>7 to do a fully competent job on both -- on</p> <p>8 either one of those. They can do part of</p> <p>9 those, but not the whole thing.</p> <p>10 Q. Okay. And can you tell me what -- I tell</p> <p>11 you what. Let me read those first two</p> <p>12 bullets into the record. And you're</p> <p>13 referring to bullet number one that says</p> <p>14 plan, organizes, develops, coordinates and</p> <p>15 implements a comprehensive personnel</p> <p>16 management program; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. Of that bullet point --</p> <p>19 MR. NIX: Is that the first bullet</p> <p>20 point?</p> <p>21 MR. MOZINGO: That's the first</p> <p>22 bullet point.</p> <p>23 Q. Of that first bullet point, what portion of</p>
Page 219	Page 221
<p>1 bullet points the ones that Lynn Hubbard</p> <p>2 and Marilyn Benson can perform, are</p> <p>3 competent to perform, and the ones that</p> <p>4 they are incompetent to perform?</p> <p>5 MR. NIX: Object to the form for</p> <p>6 the same reasons previously</p> <p>7 noted.</p> <p>8 MR. TARVER: He misspoke about his</p> <p>9 own clients.</p> <p>10 A. You said Lynn Hubbard and Marilyn Benson.</p> <p>11 Q. Thank you. Your attorney, Courtney, made a</p> <p>12 comment that is very well made and needs to</p> <p>13 be included in the record, so let me reask</p> <p>14 that question based upon his very</p> <p>15 well-placed concern.</p> <p>16 Looking at the work performed listed on</p> <p>17 Plaintiffs' Exhibit 46, can you please tell</p> <p>18 the jury what work listed there Joan Owens</p> <p>19 and Lynn Hubbard are competent and capable</p> <p>20 of performing and what of the work listed</p> <p>21 there they are incompetent or incapable of</p> <p>22 performing.</p> <p>23 MR. NIX: Object to the form for</p>	<p>1 it would they be able to perform and what</p> <p>2 portion would they not?</p> <p>3 A. They would be able to assist in organizing</p> <p>4 part of that and possibly part of the</p> <p>5 implementation.</p> <p>6 Q. Anything else they would be able to do?</p> <p>7 A. On that first bullet, no.</p> <p>8 Q. Yes, sir. On that first bullet.</p> <p>9 A. The second bullet --</p> <p>10 Q. Let me read the second bullet into the</p> <p>11 record. It says, coordinates efforts to</p> <p>12 include various personnel functions such as</p> <p>13 recruitment, selection, job placement,</p> <p>14 position classification, employee training,</p> <p>15 performance appraisals and affirmative</p> <p>16 action. Okay. Tell me which ones they --</p> <p>17 of that bullet, second bullet, they would</p> <p>18 be able to perform.</p> <p>19 A. I think Joan could do part of the</p> <p>20 recruitment process. Lynn hasn't had that</p> <p>21 much exposure to that part. Selection,</p> <p>22 both could do those. Job placement, both</p> <p>23 could do it. Position classification,</p>

Page 222

1 employee training, limited backgrounds in  
 2 doing that. Performance appraisal, both  
 3 could do okay with that. And Lynn could do  
 4 a better job on the affirmative action  
 5 piece.  
 6 Q. Who wrote your affirmative action program  
 7 or affirmative action policy?  
 8 A. Lynn played a major role in that. We  
 9 already had something in place, but she put  
 10 together some stuff from other information  
 11 that she had gathered.  
 12 Q. Okay. Anything else from that second  
 13 bullet point?  
 14 A. No. Do you want to read the third one?  
 15 Q. Let's read the third one. It says,  
 16 maintains ongoing classification and pay  
 17 information from governmental agencies and  
 18 the private sector. Would they be capable  
 19 of doing that?  
 20 A. Neither one has had extensive interaction  
 21 nor experience in gathering that kind of  
 22 data, but I guess the one that I would  
 23 think would have the edge over the other

Page 223

1 one would be Lynn because of her computer  
 2 background and her writing skills.  
 3 Q. How about the next bullet point that says  
 4 consults with director of human resources,  
 5 other department heads, administrators,  
 6 supervisors and employees on rules,  
 7 regulations and provides recommendations  
 8 concerning such matters as performance  
 9 evaluations, promotions, demotions,  
 10 transfers and dismissals.  
 11 A. I think Joan would have an edge on some of  
 12 the rules and regulations over Lynn because  
 13 of her experience factor. But I think some  
 14 of the other areas, performance appraisals,  
 15 performance evaluations, promotions,  
 16 demotions, transfers and dismissals, they  
 17 might both have -- struggle in some of  
 18 those areas because they haven't had a lot  
 19 of privilege to do those.  
 20 Q. How about the next one, that would be  
 21 conducts and/or attends staff meetings,  
 22 state personnel meetings or personnel  
 23 officer meetings. Is that the next one?

Page 224

1 A. Yeah.  
 2 Q. Okay. Could either one of them do that?  
 3 A. They could attend. Interaction in some of  
 4 the meetings it would be something new for  
 5 them. But they don't attend a lot of the  
 6 state personnel meetings. But they have in  
 7 the past, so yeah.  
 8 Q. How about the next one, gathers information  
 9 and prepares budget for central office  
 10 personnel division and monitors  
 11 expenditures. Could they do that?  
 12 A. I think Lynn probably has an edge on Joan  
 13 on that because she might have done that  
 14 sometime in the past.  
 15 Q. Okay. Those bullet points that we just  
 16 covered and that you commented upon, did  
 17 you develop those bullet points?  
 18 A. I have had some major portions of dealing  
 19 with this, yeah.  
 20 Q. Were you -- Because you as personnel  
 21 manager would be most familiar with the  
 22 expected work --  
 23 A. Exactly.

Page 225

1 Q. -- of the assistant; right?  
 2 A. Yes.  
 3 Q. And so were you the major contributor or  
 4 moving force behind those --  
 5 A. Yes.  
 6 Q. -- examples? Okay.  
 7 We left off a couple. On the second  
 8 page there is a bullet point that says  
 9 coordinates various supervisory training  
 10 for departmental personnel officers and  
 11 makes oral presentations as needed.  
 12 MR. NIX: Take your time and look  
 13 at that, Henry.  
 14 Q. I'm pointing it out right there. Take your  
 15 time. Could either Lynn or Joan do that?  
 16 A. I think Lynn could make a better stab at  
 17 attempting to do this -- part of that at  
 18 least more so than Joan would be able to  
 19 just based on the interaction that I've had  
 20 with them. But it still would be quite  
 21 limited because they haven't had that.  
 22 Q. What about the next one that says -- next  
 23 and last bullet point under examples of

Deposition of Henry E. Ervin

June 10, 2008

Page 226

1 work performed. Supervises clerical and  
 2 paraprofessional staff and conducts annual  
 3 performance evaluations. Could either one  
 4 do that one, the very last bullet point  
 5 there?  
 6 A. Yes.  
 7 Q. In fact, you have placed both Joan and Lynn  
 8 in charge of the department in your  
 9 absence, have you not?  
 10 A. A day or two when I would leave or --  
 11 yeah. That's -- They would be senior  
 12 people or next in line to do -- be able to  
 13 do that. That's a normal process.  
 14 Q. Was it just for a day or two or longer?  
 15 A. I don't think it's been any longer than  
 16 three or four days during the Christmas  
 17 break.  
 18 Q. And you would do that -- You did that prior  
 19 to Marilyn Benson being put in the job of  
 20 Departmental Assistant Personnel Manager;  
 21 right?  
 22 A. Yeah. Changed it around.  
 23 Q. From time to time you have left both of

Page 227

1 them in charge in your absence?  
 2 A. That's correct.  
 3 Q. And I would assume by that fact that you  
 4 felt that they were fully competent and  
 5 capable of being in charge of the office in  
 6 your absence or you wouldn't have put them  
 7 in charge, would you?  
 8 A. Plus they have had access to the associate  
 9 commissioner right there in the same  
 10 general location. And if they had any  
 11 problems, they could always call me. So,  
 12 yeah. No, I didn't feel that I was leaving  
 13 anybody uncovered.  
 14 Q. Is there any -- We've gone through this  
 15 list and you've told me you were the  
 16 driving force behind it. So is there any  
 17 bullet points on this list that could have  
 18 been added for examples of work to be  
 19 performed?  
 20 A. Probably some wage and classification  
 21 information. Probably several other things  
 22 that could have been added. But that's  
 23 what was there, yeah.

Page 228

1 Q. Anything that could have been deleted?  
 2 A. It's always you can -- hindsight you can go  
 3 back and look and say, well, did I really  
 4 need to put on there 10 meetings, you  
 5 know. You get tired of looking at it every  
 6 time you evaluate somebody what can you  
 7 give them for attending meetings.  
 8 Q. Has the Department of Mental Health central  
 9 personnel office sought any grant funding  
 10 sources for its wage and classification  
 11 study?  
 12 A. I believe we've looked at some possibility  
 13 of grants, and I think Commie Carter, maybe  
 14 Marilyn Benson and others have actually  
 15 looked into that.  
 16 Q. Has the department actually solicited any  
 17 grants for its wage and class study?  
 18 A. I don't believe we got that far, no.  
 19 Q. Has the department -- and when I say  
 20 department, I mean central personnel office  
 21 or could be the Department of Human  
 22 Resources as it applies to central  
 23 personnel. Has the department solicited

Page 229

1 grants for anything?  
 2 A. Yes.  
 3 Q. What?  
 4 A. You say the department; right?  
 5 Q. Well, let's say central office. Has the  
 6 central office solicited grants for  
 7 anything?  
 8 A. Well, there's a policy and planning area in  
 9 central office that does specifically  
 10 that. Now, what grants they've submitted  
 11 request for I don't know.  
 12 Q. Has the central personnel office solicited  
 13 grants for anything?  
 14 A. No. We've inquired. That's about all  
 15 we've done.  
 16 Q. And the only inquiries you made, did they  
 17 concern the wage and class study, or did  
 18 they concern something else?  
 19 A. I don't remember specifically. But I think  
 20 it might have. Couple of different things.  
 21 Q. And Commie Carter helped in that inquiry?  
 22 A. Well, at one point in time you use people  
 23 in staff development or training because

Deposition of Henry E. Ervin

June 10, 2008

Page 230

1 that's an area that she's not unfamiliar  
2 with.

3 Q. So she did help?

4 A. I don't remember specifically, but that  
5 person came to my mind that we had actually  
6 talked about it.

7 Q. Is it possible, then, that Commie Carter  
8 helped with the grant investigation?

9 A. That's possible.

10 Q. Why did the department not solicit any  
11 grants for the wage and classification  
12 study?

13 MR. NIX: Object to the form.

14 A. I don't know. We -- Like I said, we have  
15 an investigator looking at grants, but I  
16 don't know where -- how successful that  
17 would have been because most of those were  
18 not designed for state governments.

19 They're private entities more or less.

20 Q. Did you investigate that prior to the  
21 creation of the Departmental Assistant  
22 Personnel Manager?

23 A. I don't recall exactly when that was.

Page 231

1 Q. Could you have investigated it prior to the  
2 creation of Departmental Assistant  
3 Personnel Manager?

4 A. Could have.

5 Q. Let me go back to a question that I wrote.  
6 I wrote in my notes to ask you this this  
7 morning and I have yet to get around to  
8 it. And I've looked at this a hundred  
9 times. Walk me through the process for the  
10 creation of a new job with the department.

11 MR. NIX: He did. He's already  
12 done that.

13 Q. We talked on points of it, but we never got  
14 around to the whole process. We got around  
15 to the involvement. You told me about the  
16 commissioner and the job evaluation. But  
17 before it ever gets to them, what is the  
18 process?

19 MR. NIX: Before it gets to who?

20 MR. MOZINGO: The job evaluation  
21 committee.

22 Q. What is the process in the creation of a  
23 new job?

Page 232

1 MR. NIX: Let me just object to  
2 the form of that. It's been  
3 asked and it's been answered.  
4 You're asking him in general;  
5 right?

6 MR. MOZINGO: In general, yeah.

7 A. Well, I mean, you have different sections  
8 that will approach you and say, well, look,  
9 I have this idea for a position that I'd  
10 like to present to you. And it could be  
11 MR. They're looking -- consumer relation  
12 specialist or whatever. And they'll bring  
13 a draft of what they would like to see and  
14 we'll take a look at it and see if it meets  
15 whatever the requirements we're trying to  
16 set up and go from there.

17 Q. Okay. And when you say they bring a draft  
18 whatever they'd like to see, is it  
19 something similar or akin to Plaintiffs'  
20 Exhibit 46 as far as sets out a definition  
21 of what the job may be and the work that  
22 may be performed?

23 A. Right. Or ask us, well, give me a

Page 233

1 similar -- show me a similar job spec for  
2 this kind of job or whatever. And then  
3 they can kind of use that as a go-by to  
4 develop something that they would like to  
5 have.

6 Q. And is that the process that was used in  
7 this case for the Departmental Assistant  
8 Personnel Manager was to create --

9 A. Well, because --

10 MR. NIX: Excuse me. Let me  
11 object to the form of the  
12 question in that you've asked  
13 that already. Flynn, you've  
14 gone through that already.  
15 And he has explained to you in  
16 minute detail I think exactly  
17 what occurred with respect to  
18 the creation of this job.

19 MR. MOZINGO: Well, yes, he's  
20 explained to me. But he  
21 hasn't explained to me the  
22 order that it occurred and  
23 that's what I'm asking, the



Deposition of Henry E. Ervin

June 10, 2008

Page 234	Page 236
<p>1 order in which it occurred.</p> <p>2 We got the JEC and the</p> <p>3 commissioner. I got that</p> <p>4 order. But we didn't get what</p> <p>5 all occurred prior to getting</p> <p>6 to them.</p> <p>7 MR. NIX: Actually, I think he</p> <p>8 said it was the commissioner</p> <p>9 and the JEC. That was the</p> <p>10 order although --</p> <p>11 MR. MOZINGO: That will be</p> <p>12 reflected in the record. But</p> <p>13 we never did get the order of</p> <p>14 events before them. That's</p> <p>15 all I want to know is just the</p> <p>16 order of events before --</p> <p>17 MR. NIX: Before it got where?</p> <p>18 MR. MOZINGO: Before it got to the</p> <p>19 JEC or the commissioner. I</p> <p>20 just want to know the order of</p> <p>21 events. And we've established</p> <p>22 the events. That's what he's</p> <p>23 talked about. But we haven't</p>	<p>1 MR. MOZINGO: Well, then I won't</p> <p>2 do that. I just want him to</p> <p>3 walk me through the order --</p> <p>4 MR. NIX: No, you don't want him</p> <p>5 to do that.</p> <p>6 MR. MOZINGO: I don't?</p> <p>7 MR. NIX: I don't think so, but go</p> <p>8 ahead and ask your question.</p> <p>9 MR. MOZINGO: Well, I think I've</p> <p>10 just modified my question</p> <p>11 to -- around your concerns,</p> <p>12 so ...</p> <p>13 MR. NIX: Do you mind asking it</p> <p>14 one more time?</p> <p>15 Q. Can you walk me through the order of how</p> <p>16 this -- of what came first, Mr. Ervin?</p> <p>17 A. I think I've -- I know exactly what I've</p> <p>18 covered and I know what I haven't covered.</p> <p>19 And I think the part that -- and you might</p> <p>20 have forgotten this part. But I talked</p> <p>21 about the Form 40 that I looked at as it</p> <p>22 relates to the assistant personnel.</p> <p>23 Q. Yes.</p>
Page 235	Page 237
<p>1 established the order in which</p> <p>2 they occurred.</p> <p>3 MR. NIX: You've established the</p> <p>4 events or the event, but you</p> <p>5 haven't established the order</p> <p>6 in which they occurred.</p> <p>7 MR. MOZINGO: Maybe I shouldn't</p> <p>8 say we established the</p> <p>9 events. We've discussed the</p> <p>10 events. But we haven't</p> <p>11 discussed the order.</p> <p>12 Q. And, again, I'm not asking you the full</p> <p>13 order because I think you have told me what</p> <p>14 happened at the end. But I want to know --</p> <p>15 pick up in the middle, because we talked</p> <p>16 about the JEC and we talked about</p> <p>17 commissioner. But I want to talk about</p> <p>18 before it got to them.</p> <p>19 MR. NIX: Excuse me. But, again,</p> <p>20 you're trying to give him the</p> <p>21 order by confining him to the</p> <p>22 JEC first and then the</p> <p>23 commissioner.</p>	<p>1 A. So that really was the beginning of looking</p> <p>2 at something. But the idea was already</p> <p>3 there in terms of what we actually needed,</p> <p>4 what I needed to be able to present to the</p> <p>5 commissioner to establish this position.</p> <p>6 So basically that was the first part of the</p> <p>7 process. The rest of it you already got.</p> <p>8 Q. I got that. Okay. The Form 40. And after</p> <p>9 you had the Form 40 and you had the input</p> <p>10 from Marilyn or any other sources, was this</p> <p>11 the next step, Plaintiffs' Exhibit 46?</p> <p>12 MR. NIX: Excuse me. Again, I</p> <p>13 object to the form of the</p> <p>14 question. It's very</p> <p>15 ambiguous. You're asking him</p> <p>16 for something very specific.</p> <p>17 You're giving him information</p> <p>18 in your question that is not</p> <p>19 correct and you're asking him</p> <p>20 to basically confirm your</p> <p>21 preference as to the order of</p> <p>22 events. That's exactly what's</p> <p>23 going on. And he's already</p>

Page 238	Page 240
<p>1 explained to you, Flynn, what</p> <p>2 happened, how it happened and</p> <p>3 the order of events. I object</p> <p>4 to the form.</p> <p>5 Q. Let me state for the record, Mr. Ervin, I</p> <p>6 don't have any preference of the order. I</p> <p>7 just want to know what the order was. I</p> <p>8 don't have a preference. That's why I'm</p> <p>9 asking you to tell me the order. The Form</p> <p>10 40 came first. I got that. When did this</p> <p>11 come?</p> <p>12 A. It had to have been second. But you had</p> <p>13 some verbal kinds of discussions in there</p> <p>14 between because I talked to the</p> <p>15 commissioner. I talked to my boss,</p> <p>16 Dillihay, regarding what I had in mind. So</p> <p>17 that would be the third piece right there.</p> <p>18 Q. So this would have come in conjunction with</p> <p>19 discussions you had with Dillihay and the</p> <p>20 commissioner?</p> <p>21 A. Yes.</p> <p>22 (Plaintiffs' Exhibit 49 was marked</p> <p>23 for identification.)</p>	<p>1 that have come next based upon the date of</p> <p>2 these documents?</p> <p>3 MR. NIX: I object to the form. I</p> <p>4 mean, you're asking him about</p> <p>5 something that occurred over</p> <p>6 three years ago. You're</p> <p>7 giving him documents in an</p> <p>8 order that you have designed.</p> <p>9 MR. MOZINGO: I'm going by the</p> <p>10 date on the documents, Chip.</p> <p>11 This isn't a test.</p> <p>12 MR. NIX: You've got a document</p> <p>13 that's dated in May that you</p> <p>14 haven't shown him. Why don't</p> <p>15 you show him that one?</p> <p>16 MR. MOZINGO: Tell me which one it</p> <p>17 is and I'll show it to him.</p> <p>18 MR. NIX: I don't know the number</p> <p>19 of it, but you've got it.</p> <p>20 MR. MOZINGO: Well, I'll look for</p> <p>21 it because -- I'll look for it</p> <p>22 and if I have it I'll</p> <p>23 certainly show it to him.</p>
Page 239	Page 241
<p>1 Q. And let me show you what I'm marking</p> <p>2 Plaintiffs' Exhibit 49, then. That</p> <p>3 document you told me this morning is dated</p> <p>4 January. Let me show you what's been</p> <p>5 marked Plaintiffs' Exhibit 49. And this is</p> <p>6 dated February 3rd, 2005. Would that have</p> <p>7 been the next thing to occur, the</p> <p>8 memorandum to the personnel department?</p> <p>9 A. Yes.</p> <p>10 Q. And I think you explained to me this</p> <p>11 morning you give personnel notice so they</p> <p>12 can put it in their system; correct?</p> <p>13 A. That's correct.</p> <p>14 (Plaintiffs' Exhibit 50 was marked</p> <p>15 for identification.)</p> <p>16 Q. All right. And then let me show you what's</p> <p>17 been marked Plaintiffs' Exhibit 50. And</p> <p>18 this is a memorandum dated June 14th --</p> <p>19 again, I'm trying to go through the date of</p> <p>20 these. And this is a memorandum dated June</p> <p>21 14th, 2005 from you to Commissioner Houston</p> <p>22 requesting the creation of the Departmental</p> <p>23 Assistant Personnel Manager job. Would</p>	<p>1 A. Only thing I can do is go by the dates</p> <p>2 too. I don't remember specifically -- I</p> <p>3 mean, something in this little stack could</p> <p>4 have come before something else. I'm not</p> <p>5 real certain.</p> <p>6 Q. And I'll look through my stack, and if I</p> <p>7 find it, I'll certainly put it in front of</p> <p>8 you. I'm not trying to trick you,</p> <p>9 Mr. Ervin. Honestly I'm not. I'm just</p> <p>10 trying to establish the date of these</p> <p>11 documents and make sure that those dates</p> <p>12 are the order in which they came. That's</p> <p>13 all. And if they're not, tell me and I'll</p> <p>14 ask you why. That's it.</p> <p>15 A. And I don't know. I don't know.</p> <p>16 Q. Okay. Well, do you believe, Mr. Ervin --</p> <p>17 and, again, I'll represent to you I'll look</p> <p>18 through my stack because I'm not trying to</p> <p>19 leave anything out. Honestly I'm not. Do</p> <p>20 you believe this came next, Plaintiffs'</p> <p>21 Exhibit 50?</p> <p>22 A. I'm not real certain, because you have this</p> <p>23 that would have gone with this letter and</p>



Deposition of Henry E. Ervin

June 10, 2008

Page 242

1 this form here.  
 2 Q. Thank you for telling me that.  
 3 A. It should have all gone to the commissioner  
 4 at least -- at one time for an overall  
 5 general approval.  
 6 Q. Thank you. And I need to know that. I  
 7 need to know that. So --  
 8 MR. TARVER: Can we state for the  
 9 record what those were when  
 10 you said this?  
 11 Q. You told me for the record Plaintiffs'  
 12 Exhibit 50 would have gone to the  
 13 commissioner along with Plaintiffs' Exhibit  
 14 49 and Plaintiffs' Exhibit 46; correct?  
 15 A. Yeah.  
 16 Q. Did I leave anything out?  
 17 A. Nothing I can remember -- I can recall.  
 18 You haven't put anything else out there,  
 19 have you?  
 20 Q. No, sir --  
 21 MR. NIX: No, he hasn't.  
 22 Q. -- I haven't.  
 23 So after you got Plaintiffs' Exhibit 46

Page 243

1 and 49 you would put them together with  
 2 Plaintiffs' Exhibit 50 and you would have  
 3 sent them to the commissioner?  
 4 MR. NIX: Object to the form.  
 5 Q. Is that correct?  
 6 A. Logically that would make sense to me. I  
 7 can't say for certain, but ...  
 8 Q. Plaintiffs' Exhibit 50 is dated June 14th,  
 9 2005; correct?  
 10 A. Yes.  
 11 Q. Do you believe that's the day that you sent  
 12 the request to the commissioner?  
 13 A. That I cannot -- no way can I testify to  
 14 that. I don't know. It could have been  
 15 five days later. It could have been -- It  
 16 could have been later. I'm not sure.  
 17 MR. NIX: I'm sorry, Flynn. When  
 18 you say sent the request, you  
 19 mean that document?  
 20 MR. MOZINGO: The request that's  
 21 reflected in Plaintiffs'  
 22 Exhibit 50.  
 23 Q. So you don't know if you actually sent it

Page 244

1 on June 14?  
 2 A. Don't know.  
 3 Q. It could have been later; correct?  
 4 A. Could have been.  
 5 Q. Could it have been earlier?  
 6 A. I don't know.  
 7 Q. Do you know who typed this, Plaintiffs'  
 8 Exhibit 50?  
 9 A. No.  
 10 (Plaintiffs' Exhibit 51 was marked  
 11 for identification.)  
 12 Q. And the next one I have -- and, again, all  
 13 I'm doing is going by the dates. The last  
 14 date on this document is Plaintiffs'  
 15 Exhibit -- I'm sorry. The last date on the  
 16 document that I've just marked Plaintiffs'  
 17 Exhibit 51 is 6/10/05. Let me show it to  
 18 you.  
 19 MR. NIX: Where is that date,  
 20 Flynn? That's one of the  
 21 dates. There's more than  
 22 one --  
 23 MR. MOZINGO: And I'm going to ask

Page 245

1 him about that.  
 2 MR. NIX: I just wanted to make  
 3 sure the record is clear that  
 4 51 has more than one date on  
 5 it.  
 6 Q. Plaintiffs' Exhibit 51, can you please  
 7 identify that for the record?  
 8 A. It's a Form 100.  
 9 Q. And what is a Form 100?  
 10 A. That's the form that approves the position  
 11 to be filled.  
 12 Q. And who is it signed by, if you know?  
 13 A. Mr. Dillihay, signed by the personnel  
 14 director, me at the time, and Terese Toby  
 15 representing finance and Commissioner  
 16 Houston.  
 17 MR. NIX: I would like the record  
 18 to reflect that he's reading  
 19 from the document. He's not  
 20 stating that from his  
 21 recollection. He's reading  
 22 from the document Exhibit  
 23 Number 51 that you have placed

Deposition of Henry E. Ervin

June 10, 2008

Page 246

1 before him. That's all he's  
2 doing.  
3 MR. MOZINGO: Yeah. And I think  
4 the question was who does it  
5 appear to be signed by.  
6 MR. NIX: You asked who was it  
7 signed by.  
8 MR. MOZINGO: Well, I'm sorry.  
9 MR. NIX: It appears to be signed  
10 by those people and I'm sure  
11 it was signed by those  
12 people. But I want the record  
13 to reflect so that you at  
14 trial do not take him on cross  
15 and say, well, now, you  
16 remembered this, but you don't  
17 remember that. You know what  
18 I'm saying?  
19 Q. Did you see Commissioner Houston sign  
20 Plaintiffs' Exhibit 51?  
21 A. I don't remember seeing him sign.  
22 Q. All right. Do you know -- Assuming that is  
23 his signature on there, do you know when he

Page 247

1 would have signed it?  
2 A. No, I don't.  
3 Q. Did you see Otha Dillihay sign Plaintiffs'  
4 Exhibit 51?  
5 A. No, I don't -- I didn't.  
6 Q. Assuming he signed it, do you know when he  
7 would have signed it?  
8 A. The date that's on it is 12 June '05.  
9 Q. Right. And I see that too. Do you believe  
10 that's the day he signed it?  
11 A. I don't know.  
12 Q. How about you, Mr. Ervin, that is your  
13 signature; correct?  
14 A. That's my signature.  
15 Q. What date did you sign this?  
16 A. I don't know. I didn't even put a date on  
17 there. And that's not a good habit. I  
18 need to date them.  
19 Q. Hey, don't feel bad. The commissioner  
20 didn't either, so --  
21 A. Yeah.  
22 Q. Who is Terese Toby?  
23 A. She's a Fiscal Manager II or III up in

Page 248

1 finance.  
2 Q. Is she in the central -- the central office  
3 for the Department of --  
4 A. Finance.  
5 Q. -- Mental Health or Department of Finance?  
6 A. Mental health.  
7 Q. She works inside the Department of Mental  
8 Health; correct?  
9 A. Yes.  
10 Q. In the office of finance?  
11 A. That's right.  
12 Q. Do you know what that means, the language  
13 above her signature? It says as approved  
14 by the state finance director budgetary  
15 authority. Do you know the meaning or  
16 significance of those words?  
17 A. No.  
18 Q. I don't either. I just want someone to  
19 educate me what that means.  
20 A. I don't know.  
21 Q. Okay. I'm going to take a break here and  
22 I'm going to look for a document from May  
23 in my records, because I want what we have

Page 249

1 gone through to be complete and accurate  
2 and I want it to be fair to you. Is that  
3 okay?  
4 A. Yeah.  
5 MR. MOZINGO: So let me do that  
6 and let's take a break.  
7 (Brief recess was taken.)  
8 (Plaintiffs' Exhibit 52 was marked  
9 for identification.)  
10 Q. Mr. Ervin, for the record I have gone back  
11 through my documents that I brought with me  
12 today to look for a document entitled -- or  
13 a document from May 2005. And I found one  
14 that I believe maybe your attorney was  
15 referring to earlier and I'm going to show  
16 that to you. Can you please identify that  
17 for me?  
18 A. This is pretty much a draft announcement  
19 even though it doesn't have draft on it.  
20 But it was definitely prior to the 9/15  
21 announcement that went out.  
22 Q. Do you know who prepared the draft?  
23 A. Well, it was prepared in HR. But who in

Page 250	Page 252
<p>1 particular, I mean, I'm quite sure I had</p> <p>2 some involvement in it, the commissioner,</p> <p>3 because we were back and forth in all of</p> <p>4 our meetings and he's given me input on all</p> <p>5 of the things that are on the</p> <p>6 qualifications and the kind of work</p> <p>7 involved, so ...</p> <p>8 Q. Was that draft prepared at your direction?</p> <p>9 Let me ask that question.</p> <p>10 A. Each time I met with Mr. Dillihay or the</p> <p>11 commissioner and there was any change made</p> <p>12 or they made the changes, then I came back</p> <p>13 and got somebody to make the changes.</p> <p>14 Q. Do you know who you had prepare that draft</p> <p>15 that's been marked Plaintiffs' Exhibit 52?</p> <p>16 A. No. No, I don't.</p> <p>17 Q. All right. And so in the chronological</p> <p>18 order of the things that we were going</p> <p>19 through today, assuming Plaintiffs' Exhibit</p> <p>20 52 was prepared in May, then</p> <p>21 chronologically it should fall in between</p> <p>22 exhibit -- it would fall after Plaintiffs'</p> <p>23 Exhibit 49?</p>	<p>1 trying to ask where it falls.</p> <p>2 Q. Do you believe Plaintiffs' Exhibit 52 would</p> <p>3 have been typed or generated -- I don't</p> <p>4 know what the appropriate word is --</p> <p>5 prepared after February 3rd, 2005, if you</p> <p>6 know?</p> <p>7 A. No. It just would stand to reason that it</p> <p>8 would have been prepared after that, but I</p> <p>9 don't know that to be a fact.</p> <p>10 Q. Well, then let me ask this. Do you know</p> <p>11 for a fact that this was prepared on May</p> <p>12 27th, 2005? When I say this, I'm referring</p> <p>13 to Plaintiffs' Exhibit 52.</p> <p>14 A. Yeah. Because the date's on it and you just</p> <p>15 assume that it was. But, you know, that's</p> <p>16 all you can go on.</p> <p>17 Q. Right. I understand there's a date on it.</p> <p>18 My question is, do you know for a fact that</p> <p>19 that's the day Plaintiffs' Exhibit 52 was</p> <p>20 prepared?</p> <p>21 A. I don't -- you know, I can only say -- go</p> <p>22 by what I see right here on the date, and</p> <p>23 I'm just thinking that it was prepared</p>
Page 251	Page 253
<p>1 MR. NIX: Which one are you</p> <p>2 referring to? The March --</p> <p>3 MR. MOZINGO: The February. I</p> <p>4 don't think I have March.</p> <p>5 MR. NIX: You're right. It was a</p> <p>6 February -- talking about</p> <p>7 after the February --</p> <p>8 Q. Plaintiffs' Exhibit 49. It would have</p> <p>9 followed that exhibit; right?</p> <p>10 MR. NIX: Well, I mean, the date</p> <p>11 speaks for itself, doesn't it,</p> <p>12 Flynn?</p> <p>13 MR. MOZINGO: Well, I don't know.</p> <p>14 I thought it did before today,</p> <p>15 but I'm not so sure anymore.</p> <p>16 MR. NIX: I'm not sure I know what</p> <p>17 you're talking about. You've</p> <p>18 had this document, Plaintiffs'</p> <p>19 Exhibit 52, since the very</p> <p>20 beginning of our production to</p> <p>21 you.</p> <p>22 MR. MOZINGO: I'm not trying to</p> <p>23 imply anything. I'm just</p>	<p>1 then.</p> <p>2 Q. And that's because the date's on it?</p> <p>3 A. Yeah.</p> <p>4 Q. And you said somebody in human resources</p> <p>5 would have prepared Plaintiffs' Exhibit 52?</p> <p>6 A. Uh-huh (positive response). Yes, sir.</p> <p>7 Q. When you say prepared, did you mean</p> <p>8 somebody in human resources would have</p> <p>9 typed it?</p> <p>10 A. Exactly.</p> <p>11 Q. And you don't know who typed it; is that</p> <p>12 correct?</p> <p>13 A. No.</p> <p>14 Q. Could it have been Marilyn Benson?</p> <p>15 A. Could have been Marilyn. Could have been</p> <p>16 Rebecca. Could have been -- I don't know.</p> <p>17 Q. It would not have been Joan Owens or Lynn</p> <p>18 Hubbard; correct?</p> <p>19 A. Don't think so.</p> <p>20 Q. Could you have given it to them to type,</p> <p>21 Plaintiffs' Exhibit 52?</p> <p>22 A. Could I have --</p> <p>23 Q. Yes, sir. Could you have given it to them</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 254

1 to type?  
 2 A. Yeah. I guess I could have if I had wanted  
 3 to do that.  
 4 Q. All right. Let's go over for housekeeping  
 5 purposes some things that were produced to  
 6 me today. We need to make sure that that's  
 7 reflected in the record. Mr. Ervin, one of  
 8 the documents produced to me today is Bates  
 9 stamped ADMH-07-00047. And I'm just -- I'm  
 10 not going to mark it as an exhibit because  
 11 I do believe it's a copy of Plaintiffs'  
 12 Exhibit 45. But for the record this  
 13 document was produced to me today. And  
 14 then for the record also produced to me  
 15 today was a document Bates stamped ADMH  
 16 08-00001. Mr. Ervin, can you identify this  
 17 for me and tell me what it is?  
 18 A. It's part of a log for PCQ assignments and  
 19 job titles that -- we have a book in  
 20 central office that we keep when positions  
 21 are being established or filled.  
 22 (Plaintiffs' Exhibit 53 was marked  
 23 for identification.)

Page 255

1 Q. Okay. Since you've identified it, let me  
 2 mark it for the record as Plaintiffs'  
 3 Exhibit 53. Did you prepare these log  
 4 entries? Did you make these log entries?  
 5 A. No.  
 6 Q. Do you know who would have?  
 7 A. That could have been Rebecca. It could  
 8 have been Jody. It could have been anybody  
 9 else, I guess, who would be involved in  
 10 filling positions.  
 11 Q. Is there one particular person who is  
 12 responsible for maintaining the log?  
 13 A. That's Jody at this point.  
 14 Q. Who was it back in 2004, 2005?  
 15 A. Rebecca Taylor.  
 16 Q. Do you recognize Rebecca Taylor's  
 17 handwriting?  
 18 A. No.  
 19 Q. Strike that. Can you recognize Rebecca  
 20 Taylor's handwriting?  
 21 A. No.  
 22 Q. I didn't mean to ask you if you do  
 23 recognize it since I didn't let you look at

Page 256

1 it. We'll just include that in the list in  
 2 front of you or the stack in front of you.  
 3 (Plaintiffs' Exhibit 54 was marked  
 4 for identification.)  
 5 Q. Also produced to me today, Mr. Ervin, are  
 6 two documents Bates stamped ADMH 08-00002  
 7 and ADMH 08-00003. Can you identify those  
 8 two documents for me?  
 9 A. These are locations or places where  
 10 generally certain announcements -- or I  
 11 would assume all announcements -- exempt  
 12 announcements are sent. Most of them are  
 13 community mental health centers or other  
 14 community programs.  
 15 Q. Okay. Since that was produced to me today,  
 16 can you tell me whether that document  
 17 reflects the locations where the job  
 18 announcement for personnel -- I'm sorry --  
 19 for Departmental Assistant Personnel  
 20 Manager would have been sent?  
 21 A. This would be, as far as I know, the list  
 22 where all of the exempt job classifications  
 23 are sent.

Page 257

1 Q. Which would include Departmental Assistant  
 2 Personnel Manager?  
 3 A. Yeah.  
 4 Q. And so can you explain to me, then, when  
 5 you say a list where they're all sent, what  
 6 does that mean?  
 7 A. Well, these are all community programs and  
 8 they have people who might be interested in  
 9 applying for positions that we announce.  
 10 Then we have an applicant tracking system  
 11 where people who have expressed interest in  
 12 positions, they would be sent to them also.  
 13 Q. Did you have anyone in your applicant  
 14 tracking system that had expressed interest  
 15 in the position of Departmental Assistant  
 16 Personnel Manager?  
 17 A. I don't know specifically.  
 18 Q. Who would know?  
 19 A. Well, I guess it should be something in the  
 20 file to indicate that, you know, if it was  
 21 sent out to certain individuals. If it's  
 22 nothing there, then they didn't do it.  
 23 Q. And who would be responsible --



Deposition of Henry E. Ervin

June 10, 2008

Page 258

Page 260

1 A. That was Becky.  
 2 Q. Becky would be responsible for that?  
 3 A. That's correct.  
 4 Q. But it's your testimony that this is where  
 5 all nonexempt -- I'm sorry. That's the  
 6 wrong question. Strike that.  
 7 It's your testimony that Plaintiffs'  
 8 Exhibit 54 is a list of where all exempt  
 9 job announcements are sent?  
 10 A. Yeah. Should be.  
 11 Q. And I should add that notice of intent to  
 12 fill exempt job openings are sent to the  
 13 facilities listed on Plaintiffs' Exhibit  
 14 54?  
 15 A. That's correct.  
 16 MR. NIX: The announcement? Is  
 17 that what you're talking  
 18 about?  
 19 A. Announcements.  
 20 Q. I said notice. I think the thing says  
 21 notice on it. No. It says announcement.  
 22 Okay. Let's clear that up for the record,  
 23 then. I used the wrong terminology.

Page 259

1 Okay. Plaintiffs' Exhibit 54 is the list  
 2 of facilities where notice -- or  
 3 announcement of exempt -- announcement of  
 4 intent to fill exempt job positions are  
 5 sent?  
 6 A. Yes.  
 7 Q. Did that make sense to you? Did you  
 8 understand that?  
 9 A. I understood.  
 10 Q. Okay. Thank you.  
 11 And so the announcement of intent to  
 12 fill the position of Departmental Assistant  
 13 Personnel Manager would have likewise been  
 14 sent to the facilities listed in  
 15 Plaintiffs' Exhibit 54?  
 16 A. Yes.  
 17 (Plaintiffs' Exhibit 55 was marked  
 18 for identification.)  
 19 Q. All right. Let me show you what's been  
 20 marked as Plaintiffs' Exhibit 55. This was  
 21 another document produced to me today and  
 22 it is Bates stamped ADMH 08-00005 and  
 23 attached to it is another document produced

1 today Bates stamped ADMH 08-00004.  
 2 MR. NIX: Is that the same  
 3 exhibit, both of those  
 4 documents?  
 5 MR. MOZINGO: I have marked them  
 6 as a joint exhibit. Off the  
 7 record.  
 8 (Off-the-record discussion.)  
 9 Q. Okay. The two Bates stamped documents I  
 10 just dictated for the record have been  
 11 jointly marked Plaintiffs' Exhibit 55,  
 12 Mr. Ervin. Was notice or an announcement  
 13 of the intent to fill the position of  
 14 Departmental Assistant Personnel Manager  
 15 published in The Tuscaloosa News?  
 16 A. Yes.  
 17 Q. And does Plaintiffs' Exhibit 55 reflect the  
 18 fact that an announcement of the job  
 19 opening for Departmental Assistant  
 20 Personnel Manager was advertised in The  
 21 Tuscaloosa News?  
 22 A. Yes.  
 23 Q. Mr. Ervin, back when Otha Dillihay was an

Page 261

1 associate commissioner with the Department  
 2 of Mental Health, did he ever inform you of  
 3 any inefficiencies or any -- Strike that.  
 4 Did he ever inform you of any  
 5 inefficiencies with the central office of  
 6 personnel or any needed improvements in  
 7 performance of the central office of  
 8 personnel?  
 9 A. At times when we've had discussions I'm  
 10 quite sure that has come up specifically.  
 11 Q. Can you recall today any inefficiencies in  
 12 the central office of personnel you would  
 13 have discussed with Mr. Dillihay?  
 14 A. Well, those things that he felt were not  
 15 done like he would want to see them done  
 16 were -- I guess some of the interview  
 17 questions and how they were structured he  
 18 thought they could be done better. The  
 19 interview panels and how they were set up  
 20 he felt that could have been done  
 21 differently.  
 22 Q. Anything else?  
 23 A. He had some concerns about our

Deposition of Henry E. Ervin

June 10, 2008

Page 262

1 organizational structure as set up in  
 2 central office and the fact that I guess  
 3 most of the individuals at that time were  
 4 reporting directly to me.  
 5 Q. Anything else?  
 6 A. I'm quite sure it was more than that. I  
 7 just can't think of anything at this point  
 8 that stands out.  
 9 Q. Okay. What I wrote down were he had  
 10 concerns with interview questions and how  
 11 they were structured, secondly how  
 12 interview panels were set up, and thirdly  
 13 the organizational structure.  
 14 A. Yeah.  
 15 Q. Did I list all that you told me?  
 16 A. All that I told you you have it listed.  
 17 Q. And you can't think of any others besides  
 18 those three?  
 19 A. No.  
 20 Q. The organizational structure, what was his  
 21 complaint or criticism about the  
 22 organizational structure?  
 23 A. Well, because I guess he felt that I needed

Page 263

1 to have somebody in between me and the rest  
 2 of the staff. Not everybody should be  
 3 reporting to me.  
 4 Q. Did he explain why he felt that way?  
 5 A. Well, I'm quite sure he did. I don't  
 6 remember specifically how he explained  
 7 that, though.  
 8 Q. Well, do you know why he might not want  
 9 everyone reporting to you?  
 10 A. Do I know why he wouldn't want --  
 11 Q. Yes, sir.  
 12 A. Not particularly. From the standpoint of  
 13 just organizational structures and how they  
 14 are set up, then I guess that would be  
 15 considered to be somewhat flat or whatever,  
 16 you know. So I don't know.  
 17 Q. Are those the words he used, flat?  
 18 A. I'm not real certain.  
 19 Q. Did he ever tell you that any other  
 20 divisions or offices within the Department  
 21 of Mental Health had flat organizational  
 22 structures?  
 23 A. Specifically I don't recall. You know,

Page 264

1 Mr. Dillihay and I talked about a lot of  
 2 different things that was part of what he  
 3 experienced in other places and how we  
 4 could benefit from maybe changing some of  
 5 the ways we did things that would be in our  
 6 best interest. But specifically I just  
 7 don't remember all of the things we talked  
 8 about.  
 9 Q. Right. And I'm not asking about all the  
 10 things you talked about. I'm just asking  
 11 do you recall discussing with him whether  
 12 any other offices or divisions within  
 13 mental health had flat organizational  
 14 structures?  
 15 MR. NIX: Object to the form in  
 16 that he's already answered the  
 17 question.  
 18 A. No. I just don't remember any other areas  
 19 that we talked about period.  
 20 Q. What was his criticism concerning the way  
 21 that interview panels were set up?  
 22 A. I don't recall specifically, but I -- I  
 23 think part of it had to do with -- I guess

Page 265

1 he felt more than one person should be  
 2 asking questions. You know, in other  
 3 words, it should be more participatory from  
 4 the interview panel.  
 5 Q. Anything else you recall about that one  
 6 criticism?  
 7 A. And probably the other piece I remember  
 8 specifically had to do with the questions  
 9 not being connected to the KSAs.  
 10 Q. And can you please explain what a KSA is?  
 11 A. Knowledge, skills and abilities. In other  
 12 words, the questions should be coinciding.  
 13 When you set them up, there should be a  
 14 question that relates to a particular  
 15 knowledge, skill and ability on the  
 16 assessment sheet.  
 17 Q. Back in 2004 you had three Personnel  
 18 Specialists III working under you in the  
 19 central personnel office; correct?  
 20 A. Yes.  
 21 Q. And the three were Marilyn Benson, Joan  
 22 Owens and Lynn Hubbard; correct?  
 23 A. Yes.



Deposition of Henry E. Ervin

June 10, 2008

Page 266

- 1 Q. And all three answered to you; correct?
- 2 A. That's correct.
- 3 Q. Did all three assist you in the performance
- 4 of your duties and functions?
- 5 A. All three performed duties that I asked
- 6 them to perform in terms of what their
- 7 roles were. And basically that was all
- 8 different because, you know, everybody has
- 9 got a skill level that you try to play
- 10 into.
- 11 Q. I understand. What was Marilyn Benson's
- 12 skill level?
- 13 A. I think the classification system in
- 14 general, her knowledge of the system in
- 15 general, because she had been in central
- 16 office longer than anybody else and just
- 17 knew the players and knew the system, wrote
- 18 well.
- 19 Q. Had Marilyn Benson ever worked anywhere
- 20 with mental health besides central
- 21 personnel office?
- 22 A. Yes.
- 23 Q. Where?

Page 267

- 1 A. Planning and staff development.
- 2 Q. Was that before you became Departmental
- 3 Personnel Manager?
- 4 A. No. In fact, I was personnel manager at
- 5 that time.
- 6 Q. Where was the office of planning personnel
- 7 and staff located?
- 8 A. The first office that I remember was 135
- 9 South Union. The second one was Interstate
- 10 Park.
- 11 Q. But it was located here in Montgomery?
- 12 A. Yeah.
- 13 Q. Did Marilyn Benson ever work in any of the
- 14 department's health care facilities?
- 15 A. She worked in community mental health
- 16 centers. She -- You mean one of our state
- 17 facilities is what you're talking about?
- 18 Q. Yes, sir.
- 19 A. Other than going to the facilities in the
- 20 state.
- 21 Q. As part of her central personnel
- 22 responsibilities --
- 23 A. Yeah. Uh-huh (positive response).

Page 268

- 1 Q. -- did she -- she would have worked or gone
- 2 to --
- 3 A. Yes.
- 4 Q. -- the facilities; correct?
- 5 A. Yes.
- 6 Q. My question is, then, did Marilyn Benson
- 7 ever work as -- work in the capacity as a
- 8 personnel manager at any Department of
- 9 Mental Health facility?
- 10 A. Well, we all rotated for a period of three
- 11 months to those facilities that -- when we
- 12 were looking at consolidating. That was
- 13 Greil and Tarwater. So we had like a
- 14 three-month schedule that we were working.
- 15 That included me, Joan, Lynn, Marilyn,
- 16 Suzanne Bledsoe, Rebecca Taylor. We all
- 17 rotated back and forth because everybody
- 18 had a skill level that we were performing
- 19 at those facilities.
- 20 Q. Did Marilyn Benson ever work in the
- 21 capacity of personnel manager at either
- 22 Greil or Tarwater?
- 23 A. Personnel manager? No. Not in the

Page 269

- 1 capacity. I mean, she was there to do
- 2 certain things.
- 3 Q. Did Marilyn Benson ever work in the
- 4 capacity as personnel manager in any other
- 5 department facility besides Greil and
- 6 Tarwater?
- 7 A. No, not that I'm aware of.
- 8 Q. Did Marilyn Benson ever work in the
- 9 capacity of personnel director at any
- 10 facility outside of central office?
- 11 A. I don't recall seeing that anywhere where
- 12 she has worked as a personnel director in
- 13 any facility.
- 14 (Plaintiffs' Exhibit 56 was marked
- 15 for identification.)
- 16 Q. Mr. Ervin, we talked earlier about the job
- 17 responsibilities for Ms. Benson as
- 18 reflected in her preappraisal that has been
- 19 marked Plaintiffs' Exhibit 48. Let me show
- 20 you what I am marking Plaintiffs' Exhibit
- 21 56. And this appears to be a preappraisal
- 22 for you for the period of January 1, 2005
- 23 to January 1, 2006. Have I described that

Page 270

1 document correctly?  
 2 MR. NIX: What was the date?  
 3 MR. MOZINGO: January 1, '05 to  
 4 January 1, '06.  
 5 A. It says employee performance appraisal --  
 6 preappraisal. Okay.  
 7 Q. And does that document reflect some of your  
 8 duties and responsibilities for that time  
 9 period?  
 10 A. Yes.  
 11 Q. Who has the greater duties and  
 12 responsibilities? You as departmental  
 13 personnel manager or Marilyn Benson as  
 14 assistant department personnel manager?  
 15 A. It's clear to me that this position of  
 16 Personnel Manager IV has the greater  
 17 responsibility.  
 18 Q. You have the greatest responsibilities in  
 19 that department; correct?  
 20 A. That's correct.  
 21 Q. And your responsibilities are greater than  
 22 those attributable to the assistant  
 23 department personnel manager?

Page 271

1 A. That's correct.  
 2 Q. And would you agree with me based upon the  
 3 duties described in Plaintiffs' Exhibit 56  
 4 as compared to Plaintiffs' Exhibit 48 that  
 5 you have the more complex duties and  
 6 responsibilities too?  
 7 MR. NIX: Than any other person?  
 8 MR. MOZINGO: Than any other  
 9 position in the central  
 10 personnel office.  
 11 A. Yes.  
 12 Q. Mr. Ervin, have you been offered a position  
 13 by mental health outside of the central  
 14 personnel office?  
 15 A. Outside of the central personnel office?  
 16 Q. Working outside central personnel office in  
 17 Montgomery.  
 18 A. Not outside of central personnel.  
 19 Q. Have you been offered another position in  
 20 the department other than the one you  
 21 currently hold?  
 22 A. Yes.  
 23 Q. What have you been offered?

Page 272

1 A. Manager of employee relations.  
 2 Q. Have you accepted that offer?  
 3 A. I guess not officially because it hasn't  
 4 been officially announced at this point in  
 5 time. So I don't -- you know, I haven't  
 6 had an opportunity to even speak with any  
 7 of the commission regarding that.  
 8 Q. But have you accepted the offer?  
 9 A. Yes. In my mind at this point in time.  
 10 Q. Well, have you communicated that acceptance  
 11 to anyone?  
 12 A. To Mr. Bennett.  
 13 Q. And he is the associate commissioner that  
 14 is here today with us?  
 15 A. Yes.  
 16 Q. And Mr. Bennett is your direct --  
 17 A. Immediate supervisor.  
 18 Q. And is Mr. Bennett within the communication  
 19 chain that you would utilize in  
 20 communicating your acceptance --  
 21 A. Yes.  
 22 Q. -- of that offer?  
 23 And when do you begin working in your

Page 273

1 new position?  
 2 A. The date in the letter is July 1.  
 3 Q. And do you intend to begin working in that  
 4 position on July 1?  
 5 A. As far as I know. Nothing has -- unless  
 6 something changes between now and then.  
 7 Q. When you begin working in the new position,  
 8 will that leave a vacancy in the position  
 9 of departmental personnel manager in the  
 10 central personnel office?  
 11 A. I don't know what the plans are as it  
 12 relates to that, so I can't -- you know,  
 13 that's up to Mr. Bennett and the  
 14 commissioner.  
 15 Q. Well, do you anticipate that you'll  
 16 continue to perform your present job when  
 17 you accept your new one?  
 18 A. Only if needed. Whatever parts of that job  
 19 I would be asked to perform.  
 20 Q. Well, has anyone advised you that you will  
 21 be expected to continue to perform your  
 22 current job when you accept the new one?  
 23 A. No. I haven't been advised to that extent.

Deposition of Henry E. Ervin

June 10, 2008

Page 274

1 Q. Well, has anyone communicated to you to any  
2 extent as to whether you will be expected  
3 to continue to perform your present job  
4 when you accept your new one?  
5 A. No.  
6 Q. Do you know if the qualifications and the  
7 job specification for your current position  
8 will be revised when you vacate that  
9 position?  
10 A. That's not my call. I don't know.  
11 Q. You don't know?  
12 A. I don't know.  
13 Q. Have you heard it discussed?  
14 A. No.  
15 Q. Was the job of assistant department  
16 personnel manager created in anticipation  
17 or with the expectation that Marilyn Benson  
18 will hold your current job when you vacate  
19 it?  
20 A. No, not at all.  
21 Q. Do you know if Marilyn Benson will hold  
22 your current job when you vacate it?  
23 A. I don't know, but I would think not.

Page 275

1 Q. Why not?  
2 A. She hasn't expressed any desire to even  
3 apply for it.  
4 Q. Well, she didn't express any desire to  
5 apply for the Departmental Assistant  
6 Personnel Manager, did she?  
7 A. Not in the timely frame that you asked  
8 about.  
9 Q. So you're saying she hasn't expressed any  
10 interest as of today?  
11 A. That's correct.  
12 Q. But it is true that when you obtained that  
13 job back in 1998 Marilyn Benson also  
14 applied for it?  
15 A. That's correct.  
16 Q. Would you expect her to apply for it again?  
17 A. I don't have any expectations for what she  
18 might do.  
19 Q. Who prepared the job specification for your  
20 new position?  
21 A. That was done through the commissioner,  
22 Mr. Bennett, and the HR department.  
23 Q. Your department?

Page 276

1 A. Yeah.  
2 Q. Did you contribute any to the preparation  
3 of those job specifications?  
4 A. Other than I guess some stuff that was  
5 gotten off of the Internet.  
6 Q. Did you do some research for the creation  
7 of that job?  
8 A. Yeah. A little bit.  
9 Q. And you did your own Internet research?  
10 A. Yeah.  
11 Q. Did you ask anyone to help you?  
12 A. No.  
13 Q. Was that job -- Was your new job created  
14 just for you?  
15 A. No.  
16 Q. Why was it created?  
17 A. The commissioner had a desire to have  
18 someone to be able to handle certain issues  
19 at the facility level to be able to deal  
20 with things before they got to the  
21 complaint stages or before they got to the  
22 litigation. And he had a very strong  
23 feeling about establishing that kind of

Page 277

1 position and that's the reason it's  
2 established now.  
3 Q. Is that a new position that's been  
4 established?  
5 A. It's a new classification.  
6 Q. Is it a new position?  
7 A. Yes.  
8 Q. When the job or the position was being  
9 developed, did you advise the commissioner  
10 that you intended to seek that position?  
11 A. The commissioner knew that I had some  
12 interest in that position.  
13 Q. And he nonetheless asked you to help in  
14 doing research for that position?  
15 A. Well, like I said, I wasn't the only person  
16 that was involved in looking at that  
17 particular position.  
18 Q. Who else was involved?  
19 A. Well, I think I mentioned that already. I  
20 said Mr. Bennett.  
21 Q. And the commissioner?  
22 A. Yeah. And the commissioner.  
23 Q. You did. And I'm sorry to repeat myself.

Deposition of Henry E. Ervin

June 10, 2008

Page 278

1 Was anyone else or has anyone else been  
 2 involved besides you, Mr. Bennett, and the  
 3 commissioner?  
 4 A. I think David Jackson, the commissioner's  
 5 chief of staff.  
 6 Q. Anyone else?  
 7 A. Marilyn Benson.  
 8 Q. What has Marilyn Benson done?  
 9 A. I think she probably have typed some stuff  
 10 on that.  
 11 Q. Did she type a job specification sheet for  
 12 that position?  
 13 A. That's very possible.  
 14 Q. Did she do it at your direction?  
 15 A. Yes.  
 16 Q. Was that job, the new job that you're  
 17 taking, was it advertised?  
 18 A. Yes.  
 19 Q. And did you apply for it?  
 20 A. Yes.  
 21 Q. Did you go through the interview process?  
 22 A. Yes.  
 23 Q. And did the panel recommend you be employed

Page 279

1 for the position?  
 2 A. I believe so.  
 3 Q. And the commissioner accepted that  
 4 recommendation; correct?  
 5 A. As far as I know.  
 6 Q. Does the new job require a master's degree?  
 7 A. No.  
 8 (Plaintiffs' Exhibit 57 was marked  
 9 for identification.)  
 10 Q. Let me show you what I am marking as  
 11 Plaintiffs' Exhibit 57. And the only thing  
 12 that I want you to do -- I shouldn't say  
 13 the only thing. But the reason I'm marking  
 14 this because I need somebody to establish  
 15 the authenticity for me of some documents.  
 16 And I'll represent to you what they are are  
 17 the employee performance appraisals for  
 18 Marilyn Benson as Personnel Specialist for  
 19 the period of May 01, 1998 to May 01, 1999.  
 20 MR. NIX: Are you talking about  
 21 57?  
 22 MR. MOZINGO: Yes, sir, I am.  
 23 MR. NIX: I think it says the

Page 280

1 period is April 01, '98 to  
 2 April 01, '99.  
 3 MR. MOZINGO: I'm looking at the  
 4 typed -- right there is where  
 5 I'm looking.  
 6 MR. NIX: Right.  
 7 MR. MOZINGO: Did I say May?  
 8 MR. NIX: Yeah. You said May.  
 9 MR. MOZINGO: I'm sorry. I meant  
 10 April. Thank you for  
 11 correcting me. It is April  
 12 01, 1998 to April 01, 1999.  
 13 MR. NIX: And actually I guess  
 14 this Exhibit 57 is a number of  
 15 those appraisals, isn't it?  
 16 MR. MOZINGO: It is. And I'm  
 17 going to announce it for the  
 18 record.  
 19 MR. NIX: What you've done is  
 20 you've made a composite  
 21 exhibit of Marilyn Benson's  
 22 performance evaluations or  
 23 appraisals and --

Page 281

1 MR. MOZINGO: I'm going to object  
 2 to the form. What I've done  
 3 is attempt to make a composite  
 4 exhibit.  
 5 MR. NIX: If you don't mind, just  
 6 let me do this, just say that  
 7 the top one is for April 1,  
 8 '98 to April 1, '99, and the  
 9 back one is from March 4, '06  
 10 to 9/03/06. Is that right?  
 11 Is that what you have there?  
 12 MR. MOZINGO: That will work for  
 13 me. If you say so, I will  
 14 accept that. Yeah. That's  
 15 what it appears to be for me.  
 16 MR. NIX: And then there are some  
 17 in between those that are  
 18 consecutive. Is that the way  
 19 you did it?  
 20 Q. That's the way I tried to do it,  
 21 Mr. Ervin. And I'm not going to represent  
 22 to you that I have been successful in that  
 23 endeavor; okay?



Deposition of Henry E. Ervin

June 10, 2008

Page 282

1 A. Okay.  
 2 Q. But I've tried to make a comprehensive  
 3 exhibit there of all of her appraisals  
 4 between the two time periods your attorney  
 5 just mentioned in the record. And the only  
 6 thing that I want you to do for me,  
 7 Mr. Ervin, is to authenticate, if you can,  
 8 these appraisals as being Marilyn Benson's  
 9 appraisals for those time periods.

10 MR. NIX: Do you mind explaining  
 11 what you mean by authenticate?

12 Q. Sure. I would like for you to confirm that  
 13 those appraisals are, in fact, Marilyn  
 14 Benson's appraisals for the time periods  
 15 referenced. And I'll represent to you this  
 16 is another housekeeping thing.

17 A. These are Ms. Benson's.

18 Q. Mr. Ervin, did Ms. Benson ever -- Strike  
 19 that.

20 I see Ms. Benson's signature in places  
 21 on these documents, primarily where it says  
 22 employee, her signature. Did Ms. Benson  
 23 complete or fill out any other -- any

Page 283

1 information on these documents in  
 2 Plaintiffs' Exhibit 57 other than signing  
 3 them?

4 MR. NIX: And maybe dating them.  
 5 I don't know if she did or  
 6 not.

7 A. She signed and dated them.

8 Q. Yes. She did that.

9 A. Yeah.

10 Q. And I think we probably all would stipulate  
 11 that she signed and dated them. But I'm  
 12 saying other than signing and dating them,  
 13 did she fill them out or type them up?

14 A. Not that I'm aware of.

15 Q. For example -- Perhaps that would be the  
 16 easiest thing for me to do is, for example,  
 17 there's a rating system where someone has  
 18 typed responsibilities that are being rated  
 19 and then they've given a score -- they've  
 20 handwritten a score. Do you see that?

21 A. I wrote the scores in.

22 Q. That's what I'm asking. Did you write the  
 23 scores in on all of these?

Page 284

1 A. Yes.

2 Q. Who typed the responsibilities?

3 A. It depends on what year it was whether it  
 4 was Suzanne Bledsoe who was doing  
 5 performance appraisals, whether it was  
 6 Gina. I don't know who was actually  
 7 handling those at that time.

8 Q. That's fine. It's not a trick. I just  
 9 wanted to know who would have been  
 10 involved. So in other words, a number of  
 11 people would have been involved over the  
 12 years --

13 A. Over the years, right.

14 Q. -- in typing them up?

15 A. Yeah.

16 Q. But the job evaluations that are contained  
 17 in the composite exhibit are Marilyn  
 18 Benson's primary duties that she was being  
 19 evaluated upon or being evaluated on for  
 20 the years --

21 A. Yes.

22 Q. -- contained in the composite exhibit?

23 A. That's correct.

Page 285

1 (Plaintiffs' Exhibit 58 was marked  
 2 for identification.)

3 Q. And would the same be true for Lynn  
 4 Hubbard's job evaluations for the same  
 5 period, which I am now marking Plaintiffs'  
 6 Exhibit 58 and showing to you?

7 MR. NIX: You asked a series,  
 8 Flynn.

9 Q. That was a very poor question. Let me show  
 10 you that Plaintiffs' Exhibit 58.

11 MR. NIX: Let me take a look at  
 12 it, please.

13 Q. And while your lawyer is taking a look at  
 14 it -- I tell you what. I'm going to come  
 15 around and let you look off my copy just so  
 16 we can keep the process moving along.  
 17 That's my copy. And basically the same  
 18 question I asked a minute ago. Can you  
 19 please tell me if these are Lynn Hubbard or  
 20 Karen Lynn Hubbard's job evaluations?

21 MR. NIX: Flynn, excuse me. I  
 22 have no question that you've  
 23 done this exactly according

Deposition of Henry E. Ervin

June 10, 2008

Page 286

Page 288

1 to -- I just would like to  
 2 look at it before you ask him  
 3 any more questions.  
 4 MR. MOZINGO: Sure. No problem.  
 5 (Brief pause.)  
 6 MR. NIX: You can scan through. I  
 7 think he's going to ask you  
 8 basically the same series of  
 9 questions he asked you about  
 10 Marilyn's.  
 11 Q. In fact, if I had a photographic memory, I  
 12 would go through them all the same way I  
 13 did a minute ago concerning Ms. Benson.  
 14 MR. NIX: What you're  
 15 representing, though, is that  
 16 these are all of the  
 17 performance appraisals that  
 18 we've produced to you  
 19 regarding Ms. Hubbard; is that  
 20 right?  
 21 Q. Yes, sir. I believe that to be the case,  
 22 Mr. Ervin. And I'll represent to you I  
 23 believe it to be the case because I didn't

Page 287

1 personally go in and double-check  
 2 everything, but I do believe that to be.  
 3 A. Now, the first one I didn't do -- the first  
 4 two it appears.  
 5 Q. And can you identify the first two for the  
 6 record?  
 7 A. Hang on a second. This one -- See, I don't  
 8 even see my signature. That's somebody  
 9 else's signature there.  
 10 Q. You tell me, Mr. Ervin. I don't know your  
 11 signature.  
 12 A. Yeah. Plus that's '97. I wasn't even in  
 13 central office then. And that was -- I  
 14 don't know who that is. Must be Anthony  
 15 Dikes. So my first one actually was '99  
 16 that I did.  
 17 Q. All right. And let me put it in the  
 18 record, then. You're referring to the  
 19 appraisal for Lynn Hubbard for the period  
 20 covered from?  
 21 A. 8/1/98.  
 22 Q. 8/1/98 to 8/1/99?  
 23 A. Uh-huh (positive response).

1 Q. You would have given that appraisal;  
 2 correct?  
 3 A. Yeah.  
 4 Q. And flip through and let me know the others  
 5 you would have given.  
 6 A. Looks like the same one.  
 7 Q. Yeah. That looks like a duplicate.  
 8 A. It is.  
 9 Q. And there's another one here for 8/1/99 to  
 10 8/1/2000.  
 11 A. I did that.  
 12 Q. You would have done that appraisal too?  
 13 A. Right.  
 14 Q. And then there's one here in May 1, 2000 to  
 15 May 1, 2001; correct?  
 16 A. That's correct.  
 17 Q. And you would have done that appraisal?  
 18 A. I did that one.  
 19 Q. And as we can see, Mr. Ervin, they are not  
 20 in chronological order and I apologize for  
 21 that. But there's also one here dated July  
 22 '01, 2000 to December 31, 2000 that you  
 23 would have done likewise; correct?

Page 289

1 A. Yes.  
 2 Q. You would have performed that appraisal?  
 3 A. That's correct.  
 4 MR. NIX: Since you're going  
 5 through those, let me just  
 6 talk real quickly. You see  
 7 that on all of these documents  
 8 we have blacked out the social  
 9 security numbers, even on your  
 10 clients' documents. I assume  
 11 you have no trouble with the  
 12 redactions we've made.  
 13 MR. MOZINGO: No. Not social  
 14 security number.  
 15 MR. NIX: Well, have we made any  
 16 redactions that are  
 17 objectionable?  
 18 MR. MOZINGO: Not that I recall.  
 19 MR. NIX: Well, let me know if  
 20 there are any. I'll be glad  
 21 to talk to you about them. I  
 22 don't mind you seeing the  
 23 information frankly. I think



Deposition of Henry E. Ervin

June 10, 2008

Page 290

1 we redacted them just for the  
2 purpose of privacy of  
3 Ms. Owens, Ms. Hubbard, and  
4 the other people that we've  
5 produced documents on.  
6 Q. All right. Mr. Ervin, we're still going  
7 through the composite exhibit Plaintiffs'  
8 Exhibit 58. And then we have an appraisal  
9 here that you would have done for the  
10 period from May 1, 2001 to May 1, 2002; is  
11 that correct?  
12 A. That's correct.  
13 Q. And then we have another one that you would  
14 have done from May 1, 2000 to May 1, 2001;  
15 is that correct?  
16 A. That's correct.  
17 Q. And then we have another one you would have  
18 done and this may be a duplicate --  
19 A. Looks like a copy.  
20 Q. That looks like a duplicate. I agree.  
21 Is that a duplicate or a new one?  
22 A. Looks like a new one.  
23 Q. We have one that you would have done -- an

Page 291

1 appraisal you would have performed on Lynn  
2 Hubbard from May 1, 2002 to May 1, 2003;  
3 correct?  
4 A. That's correct. That's a duplicate.  
5 Q. Okay. Is that a duplicate?  
6 A. Duplicate. Duplicate.  
7 Q. That's a new one; right?  
8 A. Uh-huh (positive response).  
9 Q. So there's another appraisal here dated May  
10 1, 2003 to May 1, 2004 that you would have  
11 done; correct?  
12 A. That's correct.  
13 Q. I believe that's a duplicate.  
14 A. Duplicate.  
15 Q. I believe that's a duplicate too.  
16 Do you see what happens, Mr. Ervin,  
17 when you don't double-check your exhibits  
18 before you walk into a deposition?  
19 A. I understand.  
20 Does that look different?  
21 Q. Well, I'm not sure. But we'll go ahead and  
22 mention it for the record. There's another  
23 one you would have done dated May 1, 2004

Page 292

1 to May 1, 2005. That's a duplicate?  
2 A. That's a duplicate.  
3 Q. I think that's a new one. Then we have one  
4 you would have done, correct, dated May 1,  
5 2006 to May 1, 2007?  
6 A. Uh-huh (positive response).  
7 Q. Is that correct?  
8 A. That's correct.  
9 Q. Please answer verbally for our court  
10 reporter.  
11 That's a duplicate; right?  
12 A. Looks like it.  
13 Q. We just covered that one.  
14 A. That appears to be a duplicate.  
15 Q. Yes, sir. I believe so.  
16 A. That's it, then.  
17 Q. Okay. So for the record Plaintiffs'  
18 Exhibit 58 is a composite exhibit -- and  
19 I'll represent to you it's composite  
20 exhibit contained of many performance  
21 appraisals concerning Lynn Hubbard that  
22 were produced by your lawyers. And we have  
23 just gone through and the appraisals that

Page 293

1 you worked on we have dictated those for  
2 the record; correct?  
3 A. Correct.  
4 Q. And I'll do my best to recall some of the  
5 questions I asked you a minute ago  
6 regarding Ms. Benson. But the  
7 responsibilities and results -- or  
8 responsibilities that are listed in those  
9 appraisals would have been the primary  
10 responsibilities of Lynn Hubbard that she  
11 was being evaluated upon for the relevant  
12 time period?  
13 A. That's correct.  
14 Q. All right. One last time let's try to go  
15 through this but for Joan Owens.  
16 MR. NIX: Flynn, have you checked  
17 this one?  
18 MR. MOZINGO: No, I have not.  
19 MR. NIX: Flynn, I assume what  
20 this is, then, is a copy of  
21 the appraisals that we've  
22 produced relative to  
23 Ms. Owens?

Deposition of Henry E. Ervin

June 10, 2008

Page 294

1 MR. MOZINGO: That's definitely  
2 where it came from.  
3 MR. NIX: That's Exhibit 59. All  
4 right.  
5 (Plaintiffs' Exhibit 59 was marked  
6 for identification.)  
7 Q. I'll represent to you, Mr. Ervin,  
8 Plaintiffs' Exhibit 59 is what I would have  
9 received from your attorney from Ms. Owens'  
10 personnel files. And it is a composite  
11 exhibit of her appraisals and I think  
12 preappraisals at least from 1998 when you  
13 would have arrived at the department up  
14 until the present time. That's my  
15 representation to you. So flip through  
16 there and let me know if I have  
17 mischaracterized that composite exhibit in  
18 any way.  
19 MR. NIX: I think I see why there  
20 are duplicates in there  
21 because we probably produced  
22 them with different Bates  
23 numbers on some of the same

Page 295

1 documents. Isn't that right?  
2 MR. MOZINGO: I think that's a  
3 possibility.  
4 MR. NIX: That's the way it was  
5 looking to me. It looks like  
6 your paralegal pulled all of  
7 them irrespective of dates.  
8 A. But you've given me some from Greil  
9 Hospital here that I didn't do, so I have  
10 to start from 12/1/98 to 12/1/99.  
11 Q. I'm sorry. You have to start. What do you  
12 mean?  
13 A. The first one I did was 12/1/98 to 12/1/99.  
14 Q. And the ones for Greil would have been  
15 before that date, the 12/1/98 date?  
16 A. Yes.  
17 With the exception of those from Greil,  
18 I did the rest of them.  
19 Q. So for the record Plaintiffs' Exhibit 59 is  
20 a composite exhibit of job evaluations for  
21 Joan Owens. And other than any evaluations  
22 from Greil Hospital that may be in that  
23 composite exhibit, all of the other and

Page 296

1 remaining job evaluations you would have  
2 done for Joan Owens?  
3 A. That's correct.  
4 Q. And as with Marilyn Benson and as with Lynn  
5 Hubbard, those job evaluations would list  
6 the primary responsibilities for Joan Owens  
7 for which she was being evaluated for the  
8 relevant time period?  
9 A. That's correct.  
10 Q. And was it your practice, Mr. Ervin, to  
11 include the majority or all of the  
12 employees' responsibilities when -- in  
13 evaluating the employee?  
14 MR. NIX: You're talking about in  
15 those documents?  
16 MR. MOZINGO: Yes, sir. In those  
17 documents in the composite  
18 exhibit.  
19 MR. NIX: In the preappraisals or  
20 in the appraisals?  
21 MR. MOZINGO: In the appraisals.  
22 A. Ask the question again.  
23 Q. Okay. Was it your practice to include all

Page 297

1 or a majority of the employees'  
2 responsibilities in the appraisals that you  
3 completed?  
4 A. Yes. You know, I guess in the training  
5 where you develop responsibilities and  
6 results, you kind of have a minimum of five  
7 that you can put on there. But some people  
8 put 10 or more. So it's basically a State  
9 Personnel rule as to how you do that.  
10 Q. And does the rule require you to list all  
11 of the employees' primary responsibility?  
12 A. Not the whole sentence structure.  
13 Sometimes you can just put one part of it  
14 and then, you know, go back and respond to  
15 it that way, rather than just going by the  
16 whole sentence, yeah. It depends on who is  
17 doing it.  
18 Q. Okay. But you would have done the  
19 composite exhibits that are marked?  
20 A. Yeah.  
21 Q. What rule are you referring to so I will --  
22 A. Well, this is in performance appraisal  
23 manual in terms of how to set up R and R's,

Page 298

1 you know, not to exceed or go under five,  
 2 but yet not to exceed 10 or so. I think  
 3 it's something like that.  
 4 Q. Performance appraisal manual?  
 5 A. That's a State Personnel document.  
 6 Q. And would you have followed that manual in  
 7 preparing those appraisals?  
 8 A. Well, I mean, specifically it's pretty much  
 9 a general rule of thumb. But I looked at  
 10 them for the content and the number of R  
 11 and R's that are on them, because a lot of  
 12 times, you know, they -- you don't have 10,  
 13 so you might want to say, well, eight will  
 14 do or -- so you can go somewhere in between  
 15 five and 10.  
 16 Q. And R and R for the record is?  
 17 A. Responsibility and results.  
 18 MR. MOZINGO: All right. We are  
 19 at the point in your  
 20 deposition where everybody  
 21 gets excited because I'm going  
 22 to review my notes now to make  
 23 sure I've covered everything.

Page 299

1 So let's -- everything I  
 2 wanted to cover with you. So  
 3 let's take a break.  
 4 (Brief recess was taken.)  
 5 Q. I've got a few more. There was testimony  
 6 earlier in this case that Marilyn was given  
 7 an office first -- given an office -- her  
 8 own office there in central office before  
 9 Joan Owens and Lynn Hubbard received one.  
 10 Is that true?  
 11 A. I don't remember the chronology in which  
 12 offices were distributed, but that could  
 13 be. I just don't remember what -- how that  
 14 fell and what was the reason. You know, it  
 15 wasn't my call. I think that June Lynn and  
 16 the associate commissioner's office is the  
 17 one that divvies out the space.  
 18 Q. So you --  
 19 A. I'm not real certain that I had anything to  
 20 do with that process.  
 21 Q. So you would have no say, then, in whether  
 22 Marilyn Benson was given an office there in  
 23 central personnel?

Page 300

1 A. Well, what I'm saying is I don't recall  
 2 exactly how that whole little process took  
 3 place. I mean, I -- that --  
 4 Q. Do you recall whether you were involved in  
 5 that process?  
 6 A. I hope I was, but I just don't remember  
 7 that kind of detail.  
 8 Q. Is it true that you would take -- Strike  
 9 that and let me back up and ask it this  
 10 way.  
 11 Prior to Marilyn Benson applying for or  
 12 receiving the promotion to Departmental  
 13 Assistant Personnel Manager, is it true  
 14 that you would take Ms. Benson with you on  
 15 your meetings with the commissioner and/or  
 16 associate commissioner?  
 17 A. I definitely don't recall doing that. If  
 18 it was a meeting that she was supposed to  
 19 be in, that was fine. But I don't remember  
 20 taking her to any special meetings like  
 21 that with me.  
 22 Q. Well, she was supposed to be in the job  
 23 evaluation committees because she was --

Page 301

1 took the minutes; correct?  
 2 A. Well, that was part of her -- her  
 3 responsibility to go to those meetings  
 4 because she was -- she was doing that when  
 5 I got to central office, yeah.  
 6 Q. Okay. Were there any other periodic or  
 7 regular meetings that she would attend with  
 8 the commissioner or associate commissioner?  
 9 A. None that I can recall.  
 10 Q. Is it possible that she did or you just  
 11 can't recall whether she did?  
 12 A. It's possible. But I just don't remember  
 13 any particular meetings that she would have  
 14 gone to unless it was something that I had  
 15 asked her to go to and I just don't recall  
 16 that.  
 17 Q. Do you recall any meeting that you asked  
 18 her to attend with you?  
 19 A. I really don't.  
 20 Q. Ms. Hubbard or Ms. Owens -- I cannot  
 21 remember which one. But one of the ladies  
 22 during their depositions were asked if they  
 23 knew that you had -- and I may describe

Deposition of Henry E. Ervin

June 10, 2008

Page 302

1 this wrong and I want you to correct me  
2 because I'm not really sure what I'm asking  
3 about. But I'll represent to you that one  
4 of them was asked whether you had advocated  
5 for them for maybe a promotion or something  
6 along that line. Do the words advocating,  
7 that word, does that ring a bell or does  
8 anything come to mind?

9 MR. NIX: You're talking about  
10 Ms. Owens or Ms. Hubbard,  
11 whether Mr. Ervin --

12 MR. MOZINGO: Yes. One of the  
13 questions you asked in their  
14 deposition. And I just wrote  
15 advocating and I didn't write  
16 it down.

17 A. Yes. Now, what about that?

18 Q. Well, they were asked whether you had  
19 advocated on their behalf for something and  
20 I didn't write down what that something  
21 was. But is there any time that you've  
22 ever advocated on behalf of either  
23 Ms. Owens or Ms. Hubbard?

Page 303

1 A. Well, Ms. Hubbard had applied for the  
2 position of Personnel Specialist III. And  
3 even though Dr. Hart made the offer to  
4 someone else, there was never any kind of  
5 conclusion on that that was in the person's  
6 favor. So we talked about Lynn as the next  
7 source of being able to get that job. So  
8 that's what I advocated for.

9 Q. Who is Mr. Hart?

10 A. Dr. Hart, Ross Hart. He was the associate  
11 commissioner for administration at the  
12 time.

13 Q. Was someone else offered the job?

14 A. Yes.

15 Q. And who was that?

16 A. Laticia Hendricks -- Kendricks or  
17 Hendricks.

18 Q. Did Ms. Hendricks or Kendricks accept the  
19 job?

20 A. No.

21 Q. And after she refused to accept it, then  
22 you recommended the job go to Lynn?

23 A. Yes.

Page 304

1 Q. And that would have been around -- in  
2 connection with Lynn becoming a Personnel  
3 Specialist III?

4 A. That's correct.

5 Q. Besides Lynn do you recall whether the  
6 review panel recommended anyone else --

7 A. I don't remember how --

8 Q. -- for that position?

9 A. -- what the review panel recommended. I  
10 mean, I guess I'm quite sure we can go back  
11 and find those assessments, but I don't  
12 recall.

13 Q. Was Lynn working in your department at the  
14 time?

15 A. Yes.

16 Q. Was it beneficial or helpful to you when  
17 Ms. Owens and Ms. Hubbard came to work in  
18 the central office there with you?

19 A. Beneficial?

20 Q. Yes, sir.

21 A. Well, Ms. Hubbard was already in the office  
22 when I got to central office. I was on  
23 Ms. Owens' interview panel at Greil who

Page 305

1 selected her for the personnel manager's  
2 position. So, you know, she was no  
3 stranger to me. It's not like I didn't  
4 know her. But then she was having problems  
5 with that particular facility director and  
6 wanted to get out of there. So between  
7 June Lynn asking me and requesting that I  
8 help get her transferred to central office  
9 I felt an obligation to do that and because  
10 we had lost Personnel Specialist Richard  
11 Hamilton who had retired and later passed  
12 away. But that position I was going to  
13 announce anyway.

14 Q. Okay. So you had an opening --

15 A. Yes.

16 Q. -- that was coming available?

17 A. Yeah.

18 Q. And you knew Lynn wanted to --

19 A. Not Lynn.

20 Q. I mean, Joan. I'm sorry. Joan wanted to  
21 pursue that opening?

22 A. Yes. And it wasn't that I needed Joan per  
23 se, but it was good that I had somebody



Deposition of Henry E. Ervin

June 10, 2008

Page 306	Page 308
<p>1 that I could place in that position.</p> <p>2 Q. She filled a need there in the department?</p> <p>3 A. That was -- She had the experience that I</p> <p>4 needed in terms of having the merit system</p> <p>5 and the exempt kind of experience.</p> <p>6 Q. So your needs and her needs kind of met.</p> <p>7 You needed someone to do that job and she</p> <p>8 wanted to move out of the facility she was</p> <p>9 in?</p> <p>10 A. Well, obviously, you know, if she hadn't</p> <p>11 even said anything I would have announced</p> <p>12 the position and would have filled it. And</p> <p>13 I'm quite sure I would have been able to</p> <p>14 fill it with somebody who had some</p> <p>15 experience doing something. But at the</p> <p>16 same time she was there I was on her</p> <p>17 interview panel and the personnel person</p> <p>18 who represented that panel when she was</p> <p>19 selected for the position, so I knew what</p> <p>20 her background was.</p> <p>21 Q. Do you know why Mr. Dillihay left?</p> <p>22 A. I have no idea.</p> <p>23 MR. NIX: I'm sorry. I didn't</p>	<p>1 just want it understood that I</p> <p>2 don't waive the objections we</p> <p>3 filed with respect to other</p> <p>4 cases. We filed -- Let me</p> <p>5 tell you what I'm talking</p> <p>6 about. We filed an objection</p> <p>7 to requests for production of</p> <p>8 documents.</p> <p>9 MR. MOZINGO: By the way, I'm</p> <p>10 listening. Go ahead. I just</p> <p>11 want to explain to you I'm not</p> <p>12 ignoring you because I'm</p> <p>13 trying to put that stuff</p> <p>14 together.</p> <p>15 MR. NIX: I don't care whether you</p> <p>16 are or not. I'm getting it on</p> <p>17 the record. But we filed</p> <p>18 objections to requests for</p> <p>19 production of documents and</p> <p>20 perhaps interrogatories. I</p> <p>21 can't recall offhand whether</p> <p>22 you actually asked this in</p> <p>23 interrogatories, but I know</p>
Page 307	Page 309
<p>1 hear the end of that. I</p> <p>2 apologize.</p> <p>3 MR. MOZINGO: Do you know why</p> <p>4 Mr. Dillihay left.</p> <p>5 MR. NIX: Okay.</p> <p>6 A. No.</p> <p>7 Q. Do you know if he was asked to leave?</p> <p>8 A. No. Don't know.</p> <p>9 Q. Okay. This is the last question and this</p> <p>10 is what we talked about earlier. And your</p> <p>11 attorney told me he wanted to talk about</p> <p>12 this with me, so I'm going to bring it up</p> <p>13 now.</p> <p>14 MR. MOZINGO: I want to ask him</p> <p>15 about any other lawsuits that</p> <p>16 he has sued or been sued. Do</p> <p>17 you have an objection to</p> <p>18 that?</p> <p>19 MR. NIX: Well, this is what I</p> <p>20 really want to do. If you</p> <p>21 want to ask him that, I think</p> <p>22 you should go forward and ask</p> <p>23 him. But at the same time I</p>	<p>1 you did in requests for</p> <p>2 production of documents. To</p> <p>3 requests relative to other</p> <p>4 lawsuits, we filed that</p> <p>5 objection based upon the fact</p> <p>6 that there was no definition</p> <p>7 or request for similar</p> <p>8 lawsuits. There was no time</p> <p>9 period specified except 20</p> <p>10 years. I think you specified</p> <p>11 20 years, but that's too</p> <p>12 long. I wrote you two</p> <p>13 different letters telling you</p> <p>14 that I'd be glad to meet with</p> <p>15 you anytime to discuss those</p> <p>16 objections. And I'm still</p> <p>17 willing to meet with you</p> <p>18 anytime you want to to discuss</p> <p>19 those objections. I don't</p> <p>20 want to waive those</p> <p>21 objections, but at the same</p> <p>22 time I don't want to stop you</p> <p>23 from asking Mr. Ervin about</p>

Deposition of Henry E. Ervin

June 10, 2008

Page 310

1 those issues; okay?

2 MR. MOZINGO: Okay.

3 MR. NIX: So are we in agreement

4 that by allowing you to do

5 that I'm not waiving those

6 objections?

7 MR. MOZINGO: I understand that

8 you don't waive them. I

9 understand that.

10 MR. NIX: All right. Go for it.

11 Q. Mr. Ervin, have you ever been sued before?

12 A. Individually or as a part of a department

13 like the Palm Beach County Community Health

14 Center?

15 Q. Let's do individually first. Have you ever

16 been sued before individually?

17 A. I guess for divorce.

18 Q. I don't think that would really count. And

19 we've covered that; right?

20 A. Yeah. Right.

21 Q. Besides the divorce, have you ever been

22 sued individually?

23 A. I don't recall ever being sued

Page 311

1 individually.

2 Q. Okay. Have you been sued before in any

3 other capacity?

4 A. Sued -- There was a complaint filed against

5 me or a judgment should I say filed against

6 me by the State Department of Revenue

7 because of some unpaid sales taxes for my

8 little business I had. But I didn't

9 realize that was a suit.

10 Q. And what was your business?

11 A. Ervin's House of Ribs.

12 Q. Is that a restaurant?

13 A. Yeah.

14 Q. Sounds good.

15 A. It was.

16 Q. You had a judgment filed against you --

17 A. Yeah.

18 Q. -- by State Department of Revenue?

19 A. Uh-huh (positive response). Yes.

20 Q. Any other lawsuits?

21 A. The Palm Beach County Community Mental

22 Health Center. An employee was -- he sued

23 for unlawful termination, I believe.

Page 312

1 That's what I can remember. That was in

2 1978 or '77.

3 Q. Was that in state or federal court, if you

4 recall?

5 A. State court, I believe.

6 Q. And what was the termination or resolution

7 of that lawsuit?

8 A. It was ruled in the favor of the mental

9 health center.

10 Q. And were you sued as an employee of the

11 mental health center?

12 A. Yes.

13 Q. Any other lawsuits?

14 A. None that I can remember.

15 Q. Have you been sued as -- Have you been sued

16 before as an employee of the Alabama

17 Department of Mental Health?

18 A. No.

19 Q. Have you sued anyone before?

20 A. No.

21 Q. You've never sued anyone?

22 A. No.

23 Q. Have you filed bankruptcy before?

Page 313

1 A. Yes.

2 Q. When did you file bankruptcy?

3 A. 1988. '88 or '89, I believe.

4 Q. Did that concern your restaurant?

5 A. No. No. That didn't -- wasn't concerning

6 the restaurant. That was around --

7 Q. That was your personal bankruptcy?

8 A. Yeah.

9 Q. What was the name of that restaurant again?

10 A. Ervin's House of Ribs.

11 Q. I like that name.

12 Do you remember what chapter

13 bankruptcy?

14 A. 13 and 11, I believe.

15 Q. Have you been asked to leave or have you

16 been terminated from any employment with

17 the State of Alabama?

18 A. Never.

19 Q. Have you given -- You told me you've given

20 a deposition before.

21 A. Yes.

22 Q. What have you testified in?

23 A. The Crum case, Crum versus State of Alabama



Deposition of Henry E. Ervin

June 10, 2008

Page 314

1 Personnel Department, I think.  
 2 Q. Okay. Anything else?  
 3 A. The Blackledge case.  
 4 Q. Anything else?  
 5 A. That's it.  
 6 Q. So two cases?  
 7 A. Yeah. And possibly the one in West Palm  
 8 Beach, but it's been so long ago I just  
 9 don't remember.  
 10 Q. Were you sued in the Blackledge case?  
 11 A. No. I did a deposition. That's all. I  
 12 wasn't sued.  
 13 Q. That case never went to trial; right?  
 14 A. No.  
 15 Q. To your knowledge anyway?  
 16 A. Right.  
 17 Q. What's the Crum case? What was that about?  
 18 A. That was pretty much a case against the  
 19 merit system with State Personnel and the  
 20 lack of promotions for African-Americans or  
 21 something to that extent. But we only had  
 22 one or two people -- I think it was two  
 23 people that joined that case. One was

Page 315

1 exempt. One was merit.  
 2 Q. Why did you testify in the Crum case?  
 3 A. Well, that was the part of the case  
 4 where -- that dealt with the exempt  
 5 employee that had joined the case.  
 6 Q. That exempt employee was a mental health  
 7 employee?  
 8 A. Yes.  
 9 Q. You weren't a plaintiff in the Crum case?  
 10 A. No.  
 11 Q. And you weren't being sued in the Crum  
 12 case?  
 13 A. No.  
 14 Q. Have I covered all the depositions you've  
 15 testified in?  
 16 A. I think so.  
 17 Q. Have you ever testified in any court  
 18 proceeding?  
 19 A. No.  
 20 Q. We're done, then.  
 21 A. Thank you, sir.  
 22 MR. NLX: Thank you very much.  
 23

Page 316

1 (Deposition was concluded at  
 2 approximately 6:50 p.m.)  
 3  
 4 \*\*\*\*\*  
 5 FURTHER DEPONENT SAITH NOT  
 6 \*\*\*\*\*  
 7  
 8 REPORTER'S CERTIFICATE  
 9 STATE OF ALABAMA:  
 10 MONTGOMERY COUNTY:  
 11 I, Lyn Daugherty, Certified Shorthand  
 12 Reporter and Commissioner for the State of Alabama  
 13 at Large, do hereby certify that I reported the  
 14 deposition of:  
 15 HENRY E. ERVIN  
 16 who was duly sworn by me to speak the truth, the  
 17 whole truth and nothing but the truth, in the  
 18 matter of:  
 19 JOAN FAULK OWENS and KAREN LYNN  
 20 HUBBARD,  
 21 Plaintiffs,  
 22 vs.  
 23 STATE OF ALABAMA Department of Mental

Page 317

1 Health AND MENTAL RETARDATION, et  
 2 al.,  
 3 Defendants.  
 4 IN THE UNITED STATES DISTRICT COURT  
 5 FOR THE MIDDLE DISTRICT OF ALABAMA  
 6 NORTHERN DIVISION  
 7 Civil Action No. 2:07-cv-650-WHA  
 8 on Tuesday, June 10th, 2008.  
 9 The foregoing 316 computer-printed pages  
 10 contain a true and correct transcript of the  
 11 examination of said witness by counsel for the  
 12 parties set out herein. The reading and signing is  
 13 hereby not waived.  
 14 I further certify that I am neither of kin  
 15 nor of counsel to the parties to said cause nor in  
 16 any manner interested in the results thereof.  
 17 This 20th day of June 2008.  
 18  
 19  
 20  
 21 Lyn Daugherty, ACCR #66  
 22 Expiration Date: 9-30-2008  
 23 Certified Court Reporter  
 And Commissioner for the  
 State of Alabama at Large

Deposition of Henry E. Ervin

June 10, 2008

Page 318

\*\*\*\*\*  
WITNESS SIGNATURE PAGE  
\*\*\*\*\*

In Re: Joan Faulk Owens and Karen Lynn Hubbard vs.  
State of Alabama Department of Mental Health  
and Mental Retardation, et al.

I, HENRY E. ERVIN, hereby certify that I  
have read the foregoing transcript of my deposition  
given on Tuesday, June 10th, 2008, and it is a true  
and correct transcript of the testimony given by me  
at the time and place stated with the corrections,  
if any, and the reasons therefor noted on a  
separate sheet of paper and attached hereto.

\_\_\_\_\_  
HENRY E. ERVIN  
SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

**DEPOSITION OF MARILYN B. BENSON**

**June 24, 2008**

**Pages 1 through 258**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

**Plaintiffs'  
Exhibit 109**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

vs.

CIVIL ACTION NO.  
2:07-cv-650-WHA

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF MARILYN B. BENSON, taken  
pursuant to stipulation and agreement before Lyn  
Daugherty, ACCR #66, Certified Court Reporter and  
Commissioner for the State of Alabama at Large, in  
the Law Offices of Nix, Holtsford, Gilliland,  
Higgins & Hitson, 4001 Carmichael Road, Suite 300,  
Montgomery, Alabama, on Tuesday, June 24th, 2008,  
commencing at approximately 10:30 a.m.

\* \* \* \* \*

Deposition of Marilyn B. Benson

June 24, 2008

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. J. Flynn Mozingo</p> <p>4 MELTON, ESPY &amp; WILLIAMS</p> <p>5 Attorneys at Law</p> <p>6 255 Dexter Avenue</p> <p>7 Montgomery, Alabama 36104</p> <p>8 FOR THE DEFENDANTS:</p> <p>9 Mr. H.E. Nix, Jr.</p> <p>10 NIX, HOLTSFORD, GILLILAND, HIGGINS &amp; HITSON</p> <p>11 Attorneys at Law</p> <p>12 4001 Carmichael Road, Suite 300</p> <p>13 Montgomery, Alabama 36106</p> <p>14 Mr. Courtney W. Tarver</p> <p>15 Deputy Attorney General and General Counsel</p> <p>16 Bureau of Legal Services</p> <p>17 ADHM/MR</p> <p>18 RSA Union Building</p> <p>19 100 North Union Street</p> <p>20 Montgomery, Alabama 36130</p> <p>21 ALSO PRESENT: Ms. Joan Owens</p> <p>22 Ms. Lynn Hubbard</p> <p>23 *****</p> <p>EXAMINATION INDEX</p> <p>MARILYN B. BENSON</p> <p>BY MR. MOZINGO ..... 6</p> <p>(Index continued on next page)</p>	<p>1 73 Job evaluation committee meeting minutes 192</p> <p>2 from January 22, 2004 through November</p> <p>3 6, 2007</p> <p>4 74 Preappraisal for period covered from 201</p> <p>5 April 1, 2003 to April 1, 2004</p> <p>6 75 E-mail dated May 7, 2007 from Marilyn 216</p> <p>7 Benson to Joan Owens</p> <p>8 76 Composite exhibit of Bates stamped 218</p> <p>9 documents ADMH 01-03-00325 through ADMH</p> <p>10 01-03-00340</p> <p>11 77 Composite exhibit of Bates stamped 225</p> <p>12 documents ADMH 03-00006 through ADMH</p> <p>13 08-00013</p> <p>14 78 Reannouncement for the Departmental 228</p> <p>15 Assistant Personnel Manager position</p> <p>16 *****</p>
Page 3	Page 5
<p>1 EXHIBIT INDEX</p> <p>2 PAGE</p> <p>3 Plaintiff</p> <p>4 60 Re-notice to take deposition duces tecum 6</p> <p>5 61 Defendant Marilyn Benson's responses to 12</p> <p>6 plaintiffs' first consolidated discovery</p> <p>7 62 Job specification for Personnel 13</p> <p>8 Specialist III</p> <p>9 63 Letter dated February 22, 2006 to 42</p> <p>10 Marilyn Benson from Henry Ervin</p> <p>11 64 Essential job functions for Departmental 59</p> <p>12 Assistant Personnel Manager</p> <p>13 65 Knowledge, skills and abilities for 60</p> <p>14 Departmental Assistant Personnel Manager</p> <p>15 66 Memorandum to Lynn Hubbard from Henry 62</p> <p>16 Ervin dated November 9, 2007</p> <p>17 67 Application for employment 73</p> <p>18 68 Announcement of intent to fill a 145</p> <p>19 nonmerit position</p> <p>20 69 Application evaluation form 164</p> <p>21 70 Document printed from state of Georgia 177</p> <p>22 web site for human resources director</p> <p>23 position</p> <p>71 Document printed from state of Tennessee 178</p> <p>web site for human resources manager</p> <p>position</p> <p>72 Document printed from state of Tennessee 179</p> <p>web site for human resources director</p> <p>position</p>	<p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between counsel representing the parties that the</p> <p>4 deposition of MARILYN B. BENSON is taken pursuant</p> <p>5 to the Federal Rules of Civil Procedure and that</p> <p>6 said deposition may be taken before Lyn Daugherty,</p> <p>7 Certified Shorthand Reporter, and Commissioner for</p> <p>8 the State of Alabama at Large, without the</p> <p>9 formality of a commission, that objections to</p> <p>10 questions other than objections as to the form of</p> <p>11 the question need not be made at this time but may</p> <p>12 be reserved for a ruling at such time as the said</p> <p>13 deposition may be offered in evidence or used for</p> <p>14 any other purpose by either party provided for by</p> <p>15 the Statute.</p> <p>16 It is further stipulated and agreed by and</p> <p>17 between counsel representing the parties in this</p> <p>18 case that the filing of said deposition is hereby</p> <p>19 waived and may be introduced at the trial of this</p> <p>20 case or used in any other manner by either party</p> <p>21 hereto provided for by the Statute regardless of</p> <p>22 the waiving of the filing of the same.</p> <p>23 It is further stipulated and agreed by and</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 6	Page 8
<p>1 between the parties hereto and the witness that the</p> <p>2 signature of the witness to this deposition is</p> <p>3 hereby waived.</p> <p>4 *****</p> <p>5 MARILYN B. BENSON</p> <p>6 The witness, after having first been duly sworn</p> <p>7 to speak the truth, the whole truth and nothing but</p> <p>8 the truth testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. MOZINGO:</p> <p>11 Q. Would you please state your full name for</p> <p>12 the record?</p> <p>13 A. Marilyn Berry Benson.</p> <p>14 Q. Ms. Benson, my name is Flynn Mozingo.</p> <p>15 We've met before. And we're here to take</p> <p>16 your deposition today in a lawsuit filed</p> <p>17 against you by Joan Owens and Karen</p> <p>18 Hubbard; is that correct?</p> <p>19 A. That's correct.</p> <p>20 (Plaintiffs' Exhibit 60 was marked</p> <p>21 for identification.)</p> <p>22 Q. Let me show you what has been marked</p> <p>23 Plaintiffs' Exhibit 60, and I'll represent</p>	<p>1 people that have assisted us</p> <p>2 with the technical aspects of</p> <p>3 getting the data to make sure</p> <p>4 that we were correctly</p> <p>5 accessing the material. And</p> <p>6 we met with them last week and</p> <p>7 learned that we -- that there</p> <p>8 was material we did not</p> <p>9 realize existed and that we</p> <p>10 were not correctly accessing</p> <p>11 it in terms of getting all of</p> <p>12 it. And, therefore, we've</p> <p>13 gone about proceeding to</p> <p>14 continue going through the</p> <p>15 documentation that exists that</p> <p>16 we were unaware of</p> <p>17 previously. And I apologize</p> <p>18 to you for that. It's just</p> <p>19 one of those things that</p> <p>20 happened and it's due to our</p> <p>21 inexperience with this</p> <p>22 process.</p> <p>23 MR. MOZINGO: No problem. Just</p>
Page 7	Page 9
<p>1 to you that that is the renotece for your</p> <p>2 deposition. Have you seen that document</p> <p>3 before?</p> <p>4 A. Yes.</p> <p>5 Q. You have. Okay. In particular, if you'll</p> <p>6 look over to the last page there is a</p> <p>7 request for production of documents there</p> <p>8 listed in Exhibit A. Have you seen that</p> <p>9 page before?</p> <p>10 A. Yes, I have.</p> <p>11 Q. And I spoke with your attorney this morning</p> <p>12 regarding some documents that are being</p> <p>13 produced in response to that request.</p> <p>14 MR. MOZINGO: And, Chip, if you</p> <p>15 want to at this time add to</p> <p>16 the record what we discussed.</p> <p>17 MR. NIX: Sure. What I told you</p> <p>18 earlier this morning off the</p> <p>19 record was this: I think I</p> <p>20 wrote you -- I don't know if</p> <p>21 it was last week or the week</p> <p>22 before. But I told you that</p> <p>23 we would be talking to the</p>	<p>1 wanted to make sure that the</p> <p>2 record will be supplemented</p> <p>3 after you-all finish</p> <p>4 reviewing -- or the production</p> <p>5 will be supplemented.</p> <p>6 MR. NIX: If there's anything</p> <p>7 there that needs to be</p> <p>8 supplemented. And I will say</p> <p>9 to you that there -- I think I</p> <p>10 told you about two</p> <p>11 documents --</p> <p>12 MR. MOZINGO: Right.</p> <p>13 MR. NIX: -- that were there that</p> <p>14 will be given to you today.</p> <p>15 MR. MOZINGO: Okay.</p> <p>16 MR. NIX: We've tried to focus on</p> <p>17 Ms. Benson's stuff first and</p> <p>18 then, you know ...</p> <p>19 Q. And it's my understanding, Ms. Benson, from</p> <p>20 talking with your attorney earlier that</p> <p>21 there are some documents, particularly</p> <p>22 documents that have been retrieved from</p> <p>23 your computer, that will be produced</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 10	Page 12
<p>1 today. Do you have that same</p> <p>2 understanding?</p> <p>3 A. Yes. That is my understanding.</p> <p>4 Q. Have you personally gone on your computer</p> <p>5 and looked for documents responsive to the</p> <p>6 production request reflected in Plaintiffs'</p> <p>7 Exhibit 60?</p> <p>8 A. Yes. And my attorneys have also obtained</p> <p>9 that information.</p> <p>10 Q. So you have gone on your computer, then, to</p> <p>11 look for responsive documents?</p> <p>12 A. Yes.</p> <p>13 Q. And you brought documents with you today to</p> <p>14 be produced in response to that production</p> <p>15 request?</p> <p>16 A. My attorneys have that.</p> <p>17 MR. MOZINGO: Okay. And your</p> <p>18 secretary is going to bring</p> <p>19 those in when she gets through</p> <p>20 redacting social security</p> <p>21 numbers and things?</p> <p>22 MR. NIX: My paralegal is, yes, as</p> <p>23 soon as she finishes doing</p>	<p>1 don't know whether it was</p> <p>2 asked for. I don't know</p> <p>3 whether it was -- I mean, but</p> <p>4 we're going to -- we're</p> <p>5 numbering that and really</p> <p>6 we'll be giving you that, too,</p> <p>7 as part of the stuff we'll be</p> <p>8 providing, which is a little</p> <p>9 bit different from what you</p> <p>10 asked.</p> <p>11 Q. So for the record, then, any documents that</p> <p>12 would be responsive to that request,</p> <p>13 Ms. Benson, you have given to your</p> <p>14 attorneys; is that correct?</p> <p>15 A. Yes. That is correct.</p> <p>16 (Plaintiffs' Exhibit 61 was marked</p> <p>17 for identification.)</p> <p>18 Q. Ms. Benson, let me show you what has been</p> <p>19 marked Plaintiffs' Exhibit 61. And I'll</p> <p>20 represent to you that that is the response</p> <p>21 I received from you or on your behalf --</p> <p>22 well, to the plaintiffs' consolidated</p> <p>23 discovery request. Have you seen</p>
Page 11	Page 13
<p>1 that.</p> <p>2 Q. We'll come back to that deposition notice,</p> <p>3 then, once those documents are produced</p> <p>4 later today.</p> <p>5 Other than the documents that have been</p> <p>6 retrieved from your computer, are there any</p> <p>7 other documents that you have in response</p> <p>8 to the production request that may have</p> <p>9 been maintained as hard copies or in</p> <p>10 regular office files?</p> <p>11 A. All documents that I had in my possession</p> <p>12 my attorneys have.</p> <p>13 MR. NIX: Flynn, I will say this.</p> <p>14 I think there's one document</p> <p>15 we're producing that we</p> <p>16 actually got from the</p> <p>17 production that Ms. Owens and</p> <p>18 Ms. Hubbard made, and that is</p> <p>19 the announcement log. It's my</p> <p>20 understanding that the</p> <p>21 announcement log was kept in</p> <p>22 the -- in Ms. Benson's office</p> <p>23 and that -- I don't know. I</p>	<p>1 Plaintiffs' Exhibit 61 before?</p> <p>2 A. Yes, I have.</p> <p>3 Q. If you will flip back to the last page of</p> <p>4 that exhibit, there is a verification</p> <p>5 page. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Whose signature is that under the</p> <p>8 verification paragraph?</p> <p>9 A. That is my signature.</p> <p>10 Q. And you signed that verification?</p> <p>11 A. Yes, I did.</p> <p>12 Q. And did you sign that verification after</p> <p>13 reviewing the response to the plaintiffs'</p> <p>14 first consolidated discovery?</p> <p>15 A. Yes.</p> <p>16 Q. And are your responses therein true and</p> <p>17 correct to the best of your knowledge?</p> <p>18 A. Yes, they are.</p> <p>19 Q. Did you prepare the response?</p> <p>20 MR. NIX: Do you mean typed it up?</p> <p>21 Q. Well, did you prepare answers or --</p> <p>22 MR. NIX: Give answers?</p> <p>23 Q. -- give answers for the response?</p>

Page 14	Page 16
<p>1 A. Yes. Through my attorney.  2 (Plaintiffs' Exhibit 62 was marked  3 for identification.)  4 Q. Ms. Benson, let me show you what I am  5 marking as Plaintiffs' Exhibit 62. Can you  6 identify that exhibit for the record?  7 A. It is a job specification for the Personnel  8 Specialist III position.  9 Q. And briefly explain what a job  10 specification is.  11 A. A job specification is a format that is  12 used in developing any type of  13 announcement. It has a definition of the  14 job. It defines the examples of the work  15 performed, KSAs, which we call knowledge,  16 skills and abilities. And it also outlines  17 the minimum qualifications necessary for a  18 particular classification.  19 Q. If you will flip to the second page  20 underneath the paragraph -- underneath the  21 qualifications paragraph you will see it  22 says 9 backslash 06. Do you see that?  23 A. I do.</p>	<p>1 examples of the work performed, KSAs. All  2 of this information already existed. It  3 was just put in this particular format.  4 Q. And when you put in that particular  5 format, can you explain to me what you  6 mean?  7 A. The format using definition, examples of  8 the work performed, KSAs, qualifications.  9 So many of our exempt positions were -- the  10 specs were very generic. They didn't have  11 very much information included in the job  12 spec. A lot of them just maybe had a  13 definition and the minimum qualifications.  14 There was nothing to really detail KSAs,  15 knowledge, skills and abilities. There was  16 nothing to detail the examples of the work  17 performed. And all of the job specs were  18 put in this particular format, at least  19 that was the process that was beginning to  20 make sure that they all were consistent.  21 Q. And you were the person who modified this  22 job spec for Personnel Specialist III back  23 in September 2006?</p>
Page 15	Page 17
<p>1 Q. What does that mean or represent?  2 A. That is the date that this particular  3 classification was modified and put in the  4 present format, including definition,  5 examples, KSAs, qualifications. All of our  6 exempt positions were put in the same  7 format, and that happens to be the  8 particular day that this particular  9 classification was devised.  10 Q. And who would have modified the  11 specification for Personnel Specialist III  12 back in -- would that be September 2006?  13 Is that the date --  14 A. September of 2006. Uh-huh (positive  15 response).  16 Q. Who would have modified that?  17 A. I did.  18 Q. Have you typically been the person there --  19 A. Now, let me strike the word modify. That's  20 probably not the correct word to use,  21 modify. The spec itself, all of this  22 information already existed. It was just  23 put in a format with the definition,</p>	<p>1 A. Now, I did that in conjunction --  2 MR. NIX: I was just going to  3 object to the form the term  4 modify.  5 COURT REPORTER: I didn't hear all  6 of your answer. I'm sorry.  7 A. I did that in conjunction with the other  8 personnel specialists. I did not have the  9 sole responsibility for doing that.  10 Q. And who would have assisted you in that  11 modification?  12 A. I believe Becky Taylor worked on some of  13 them. I'm not sure -- I can't remember  14 whether or not Ms. Owens or Ms. Hubbard  15 worked on any or not. I don't recall. We  16 did have some clerical staff during the  17 summer who also worked on the job  18 specifications at that time.  19 Q. Is it the practice of the central office to  20 periodically modify job specifications?  21 A. The practice?  22 Q. Yes, ma'am.  23 A. Well, it's not a practice. All of the job</p>

Page 18	Page 20
<p>1 specs were just put in the same format.</p> <p>2 That was the direction from our personnel</p> <p>3 director and also from the associate</p> <p>4 commissioner in making sure that all of the</p> <p>5 job specs were uniform. Being the fact</p> <p>6 that they were very generic and did not</p> <p>7 have very much information, the objective</p> <p>8 was to make sure that they were all</p> <p>9 consistent and in the same format with the</p> <p>10 same information.</p> <p>11 Q. And when you say the objective was to put</p> <p>12 them in the same format, do you mean where</p> <p>13 the specification would contain a</p> <p>14 definition --</p> <p>15 A. That's correct.</p> <p>16 Q. -- and an example of work performed?</p> <p>17 A. Examples of the work performed.</p> <p>18 Q. And knowledge, skills and abilities?</p> <p>19 A. Yes.</p> <p>20 Q. And qualifications?</p> <p>21 A. And qualifications.</p> <p>22 Q. Do you know why it was that this particular</p> <p>23 specification came to be modified or placed</p>	<p>1 completed.</p> <p>2 Q. Did the modification process itself -- and</p> <p>3 this is a general question -- did it change</p> <p>4 the definition for qualifications or</p> <p>5 knowledge, skills and abilities for any</p> <p>6 particular job?</p> <p>7 A. No. No, it did not.</p> <p>8 Q. And I believe you told me earlier, if I'm</p> <p>9 not mistaken, that the definition and</p> <p>10 qualifications and knowledge, skills and</p> <p>11 abilities for Personnel Specialist III</p> <p>12 remained the same --</p> <p>13 A. That's correct.</p> <p>14 Q. -- from pre-September 2006 to the present</p> <p>15 exhibit?</p> <p>16 A. To the best of my knowledge, yes.</p> <p>17 Q. When it came to reformatting or modifying</p> <p>18 the specifications there in central office,</p> <p>19 were you the individual responsible for</p> <p>20 that effort?</p> <p>21 A. Yes, I was.</p> <p>22 Q. And did you have anyone assisting you?</p> <p>23 A. I did.</p>
Page 19	Page 21
<p>1 and formatted like it was back in September</p> <p>2 of 2006?</p> <p>3 A. Well, the personnel committee who were</p> <p>4 working on the job specs, we -- the</p> <p>5 personnel committee made the decision to</p> <p>6 include all of these criteria; the</p> <p>7 definition, examples of the work performed,</p> <p>8 KSAs, qualifications. They were broken out</p> <p>9 into groups. And it just so happened that</p> <p>10 this particular one was also put in that</p> <p>11 same format.</p> <p>12 Q. Were all of the exempt jobs at the</p> <p>13 Department of Mental Health reformatted</p> <p>14 or --</p> <p>15 A. Yes.</p> <p>16 Q. -- modified --</p> <p>17 A. Yes.</p> <p>18 Q. -- in September of 2006?</p> <p>19 A. Well, probably all of them did not get</p> <p>20 completely done. It was such a grueling</p> <p>21 process to have to go back and do all of</p> <p>22 them. They were done in specific groups.</p> <p>23 There may have been some that were not</p>	<p>1 Q. Who all would have assisted you?</p> <p>2 A. Becky Taylor in our office worked on some</p> <p>3 of them. As I stated earlier, there was</p> <p>4 some clerical help during the summer that</p> <p>5 we also got help from them in terms of</p> <p>6 actually reformatting the job specs. One</p> <p>7 of the personnel specialists, Brooke Hogan</p> <p>8 in our office, has also worked on some job</p> <p>9 specs. I can't remember, as I said</p> <p>10 earlier, whether or not Ms. Owens or</p> <p>11 Ms. Hubbard worked on any or not.</p> <p>12 Q. Did Ms. Owens and Ms. Hubbard have the</p> <p>13 ability to work on job specs?</p> <p>14 A. Yes.</p> <p>15 Q. Did they have the experience in working on</p> <p>16 job specs?</p> <p>17 A. I assume. That was part of their job</p> <p>18 description. Yes.</p> <p>19 Q. And would -- Well, Ms. Owens and</p> <p>20 Ms. Hubbard were -- well, they currently</p> <p>21 are Personnel Specialists III; correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And prior to your promotion to your present</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 22	Page 24
<p>1 position as Departmental Assistant</p> <p>2 Personnel Manager, you were also a</p> <p>3 Personnel Specialist III?</p> <p>4 A. That is correct.</p> <p>5 Q. And is that duty to work on job specs -- or</p> <p>6 obligation, is it reflected in the job spec</p> <p>7 for Personnel Specialist III?</p> <p>8 A. I don't see any specifically listed, but</p> <p>9 you also have to see the -- this does not</p> <p>10 include every single duty and</p> <p>11 responsibility for this particular</p> <p>12 position. As outlined any one position may</p> <p>13 not include all of the duties listed, nor</p> <p>14 do the examples cover all of the duties</p> <p>15 which may be performed.</p> <p>16 Q. And that leads me into my next question,</p> <p>17 because I understand back in -- I guess it</p> <p>18 was around 2005 there were three Personnel</p> <p>19 Specialists III working in the central</p> <p>20 personnel office at mental health; is that</p> <p>21 correct?</p> <p>22 A. Ms. Owens, Ms. Hubbard and myself.</p> <p>23 Q. There would have been three, then?</p>	<p>1 Q. Next?</p> <p>2 A. And salary surveys. That is my area of</p> <p>3 expertise.</p> <p>4 Q. Any others?</p> <p>5 A. Those were the major areas.</p> <p>6 Q. Can you explain to me, then, wage and</p> <p>7 classification, that area of expertise?</p> <p>8 What did that entail from you?</p> <p>9 A. In terms of the experience that I have in</p> <p>10 that area or --</p> <p>11 Q. Well, just the responsibilities or the work</p> <p>12 that you did in that area.</p> <p>13 A. Making sure that our compensation system</p> <p>14 was equitable. Also taking a look at</p> <p>15 various states, surrounding states to</p> <p>16 ensure that our system was comparable to</p> <p>17 and competitive from the scale of the</p> <p>18 salary perspective. Making sure that</p> <p>19 recruitment and retention of various job</p> <p>20 classifications was up to par in terms of</p> <p>21 making sure that we field positions with</p> <p>22 the most qualified individuals. That was a</p> <p>23 part of my job duties and responsibilities.</p>
Page 23	Page 25
<p>1 A. Yes.</p> <p>2 Q. And the three that you just named?</p> <p>3 A. Correct.</p> <p>4 Q. And there would have been none others -- or</p> <p>5 no others? Sorry for the poor English.</p> <p>6 There would have been no others?</p> <p>7 A. No other Personnel Specialist III's.</p> <p>8 Q. In 2004 and 2005, you, Ms. Owens and</p> <p>9 Ms. Hubbard, were all three of you doing</p> <p>10 exactly the same thing as far as examples</p> <p>11 of work performed or job duties?</p> <p>12 A. Similar. There were some specialty areas</p> <p>13 in which Ms. Owens had, there were some</p> <p>14 specialty areas that Ms. Hubbard had, and</p> <p>15 likewise with myself.</p> <p>16 Q. What were your specialty areas?</p> <p>17 A. My particular specialty areas were in wage</p> <p>18 and classification, management studies,</p> <p>19 conducting salary surveys.</p> <p>20 Q. Hold on. Let me make sure I get them all.</p> <p>21 Okay. Wage and classification?</p> <p>22 A. Uh-huh (positive response). Conducting</p> <p>23 management studies.</p>	<p>1 Q. And that was a part of your duties as far</p> <p>2 as wage and classification?</p> <p>3 A. Yes.</p> <p>4 Q. And the third one was ensuring that</p> <p>5 recruitment --</p> <p>6 A. Recruitment was a part of all of our job</p> <p>7 duties as personnel specialists.</p> <p>8 Recruitment and placement. Those</p> <p>9 components were standard in terms of</p> <p>10 looking at the job duties and</p> <p>11 responsibilities as a Personnel Specialist</p> <p>12 III. Actually, three components;</p> <p>13 recruitment, selection and placement.</p> <p>14 Q. And how would you achieve that function,</p> <p>15 ensuring that recruitment, selection and</p> <p>16 placement were standard? How would you go</p> <p>17 about doing that?</p> <p>18 A. That would involve announcing various</p> <p>19 positions within the department. That</p> <p>20 would also involve the selection process,</p> <p>21 scheduling interviews, setting up</p> <p>22 interviews, making sure that the interviews</p> <p>23 were carried out appropriately according to</p>



Page 26	Page 28
<p>1 policy and procedure. It would also have</p> <p>2 involved any type of recruitment efforts</p> <p>3 from the standpoint of colleges and</p> <p>4 universities as well.</p> <p>5 Q. And how would the department recruit from</p> <p>6 colleges and universities?</p> <p>7 A. We would attend career fairs, various</p> <p>8 conventions at colleges and universities.</p> <p>9 Q. And when you say we, who actually would go</p> <p>10 and attend these fairs?</p> <p>11 A. Well, it's part of all of the Personnel</p> <p>12 Specialist III's responsibility. That's a</p> <p>13 part of the job duty to do that,</p> <p>14 recruitment, selection and placement.</p> <p>15 Q. So all three of the Personnel Specialists</p> <p>16 III would participate in recruitment,</p> <p>17 selection and placement?</p> <p>18 A. Yes.</p> <p>19 Q. As far as making sure that the compensation</p> <p>20 system was equitable, how would you go</p> <p>21 about doing that job or function?</p> <p>22 A. Conducting salary surveys from various</p> <p>23 states, surrounding states. From time to</p>	<p>1 A. Doing similar job duties and</p> <p>2 responsibilities.</p> <p>3 Q. Or with surrounding states?</p> <p>4 A. Or with surrounding states.</p> <p>5 Q. Because you have to compete with</p> <p>6 surrounding states for employees; correct?</p> <p>7 A. Exactly. Right.</p> <p>8 Q. Now, is that the same thing as number two,</p> <p>9 looking at surrounding states to see that</p> <p>10 the salaries are competitive? Is that the</p> <p>11 same thing?</p> <p>12 A. Yes.</p> <p>13 Q. And how would you literally go about doing</p> <p>14 that? Would you call and request their</p> <p>15 salary information, or would you go on-line</p> <p>16 and peruse their personnel web sites?</p> <p>17 A. It may involve both calling. We have point</p> <p>18 of contacts for each state. It could also</p> <p>19 involve visiting the web site to obtain</p> <p>20 various salary information as well.</p> <p>21 Q. All right. So I think we've covered your</p> <p>22 specialty areas. What were the specialty</p> <p>23 areas, to your knowledge, for Ms. Owens?</p>
Page 27	Page 29
<p>1 time --</p> <p>2 Q. Can I stop you there and let me ask you,</p> <p>3 when you conduct a salary survey, how do</p> <p>4 you do that?</p> <p>5 A. From time to time there would be particular</p> <p>6 classifications. For example, the job</p> <p>7 evaluation committee might request that a</p> <p>8 salary survey be done on a particular</p> <p>9 classification. At that point in time we</p> <p>10 would consult surrounding states and we</p> <p>11 would also try to find comparable positions</p> <p>12 with our department. We would also look at</p> <p>13 the state merit system and make comparisons</p> <p>14 to make sure that the salaries that we were</p> <p>15 offering were competitive.</p> <p>16 Q. Now, there is a -- Strike that.</p> <p>17 When you say ensuring that the salaries</p> <p>18 that you were offering were competitive,</p> <p>19 that means making sure that your salaries</p> <p>20 were in range with the salaries for similar</p> <p>21 positions --</p> <p>22 A. That's correct.</p> <p>23 Q. -- in the state merit system?</p>	<p>1 A. Ms. Owens, in addition as I said to</p> <p>2 recruitment, selection and placement, she</p> <p>3 dealt with the issues involving SEICTF,</p> <p>4 also issues involving accommodations for</p> <p>5 the Americans Disabilities Act.</p> <p>6 Q. Anything else?</p> <p>7 A. I'm trying to remember. I don't have a</p> <p>8 Form 40 in front of me. But she would also</p> <p>9 conduct interviews as a part of the</p> <p>10 selection process recruitment. She would</p> <p>11 do job announcements. And all of the</p> <p>12 duties as outlined on the job spec in terms</p> <p>13 of -- her specialty area, if I remember</p> <p>14 correctly, was more from the merit side</p> <p>15 because she had dealt with the merit system</p> <p>16 more so. I dealt more specifically with</p> <p>17 the exempt system.</p> <p>18 Q. Can you explain the difference between a</p> <p>19 merit system and an exempt system?</p> <p>20 A. Uh-huh (positive response). Basically the</p> <p>21 simplest way put merit system positions you</p> <p>22 have to take an exam for. You get on a</p> <p>23 register. You compete for the job from</p>

Page 30

1 that aspect of it. The exempt system you  
 2 do not have to take a test. You're  
 3 basically graded on your training, your  
 4 education and your experience in competing  
 5 for the position.  
 6 Q. Now, the Department of Mental Health  
 7 utilizes an exempt system for personnel;  
 8 correct?  
 9 A. The Department of Mental Health utilizes  
 10 both the exempt and the merit system.  
 11 Q. So some jobs, then, within the department  
 12 would be merit jobs and would follow the  
 13 applicable rules governing merit  
 14 employment?  
 15 A. That is correct.  
 16 Q. And then some jobs would be exempt jobs and  
 17 would not follow the specific merit rules?  
 18 A. Correct.  
 19 Q. Is the Department of Mental Health special  
 20 in the sense that it's able to have  
 21 nonmerit positions, or do other state  
 22 agencies utilize --  
 23 A. The department --

Page 31

1 Q. Let me strike the word. I don't want to  
 2 use the word nonmerit because you used the  
 3 word exempt. So I want to make sure I use  
 4 your word. Do other state agencies utilize  
 5 exempt systems?  
 6 A. The Department of Mental Health happens to  
 7 utilize more exempt positions than any  
 8 other agency. I think the Department of  
 9 Transportation may utilize some exempt  
 10 positions. But mental health is unique in  
 11 the fact that under Act 881 we were given  
 12 permission to utilize the exempt system.  
 13 Q. And through the exempt system is the  
 14 Department of Mental Health able to  
 15 formulate and establish its own job  
 16 classifications?  
 17 A. As needed. That is correct.  
 18 Q. And in formulating and establishing its own  
 19 job classifications, the Department of  
 20 Mental Health is able to define and set the  
 21 qualifications for the nonexempt jobs?  
 22 A. That is correct.  
 23 Q. And now going back to full circle what you

Page 32

1 told me a minute ago and make sure I  
 2 understand this correctly. But as far as  
 3 the duties and responsibilities of the  
 4 Personnel Specialist III as reflected in  
 5 Plaintiffs' Exhibit 62, you, Ms. Owens and  
 6 Ms. Hubbard generally would have had all of  
 7 those same duties and responsibilities?  
 8 A. Yes. But as I stated earlier, they may or  
 9 may not be all-inclusive.  
 10 Q. Correct. I understand.  
 11 You mentioned for Ms. Owens that she  
 12 dealt or had a specialty with SEICTF  
 13 issues. What are SEICTF issues? I'm not  
 14 sure I understand what you're talking  
 15 about.  
 16 A. State employees insurance board, any  
 17 injuries. Employees from time to time may  
 18 be injured on the job. She would handle  
 19 that aspect of individuals, employees at  
 20 central office.  
 21 Q. And specifically concerning accommodation  
 22 for American Disabilities Act --  
 23 A. Yes.

Page 33

1 Q. -- what did that specialty entail, to your  
 2 knowledge, for Ms. Owens?  
 3 A. If any employee had made a request for  
 4 accommodations, she happened to have been  
 5 on the committee in terms of making  
 6 recommendations to accommodate employees.  
 7 For example, if an employee needed  
 8 accommodations for being in a wheelchair,  
 9 maybe their desk needed to be lowered or  
 10 raised or something of that sort, then she  
 11 was on the committee to do that --  
 12 Q. Did she chair --  
 13 A. -- or the commission.  
 14 Q. -- that committee?  
 15 A. I believe she did.  
 16 Q. And I'm sorry. I didn't mean to talk over  
 17 you. I thought you had finished.  
 18 What were Ms. Hubbard's specialties?  
 19 A. Let me go back just a moment to Ms. Owens.  
 20 Q. Okay.  
 21 A. Also part of her job duty and  
 22 responsibility was the employee assistance  
 23 program. I do remember she dealt with that



Page 34	Page 36
<p>1 as well in terms of making referrals to any</p> <p>2 individuals who may require assistance.</p> <p>3 Q. And how did that program work specifically?</p> <p>4 A. It was basically a referral process whereas</p> <p>5 she would refer the individual to the</p> <p>6 appropriate source in the community to</p> <p>7 receive whatever help that they needed,</p> <p>8 whether it was counseling or whatever the</p> <p>9 case may be.</p> <p>10 Q. And as an example, let's say you had an</p> <p>11 employee maybe with a drug addiction</p> <p>12 problem.</p> <p>13 A. Yes.</p> <p>14 Q. And they needed assistance --</p> <p>15 A. That's correct.</p> <p>16 Q. -- in overcoming or dealing with that</p> <p>17 addiction. Then Ms. Owens would work with</p> <p>18 that employee in helping that employee find</p> <p>19 medical treatment or assistance for that</p> <p>20 addiction; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Anything else that Ms. Owens specialized</p> <p>23 in?</p>	<p>1 Q. And what, to your knowledge, would</p> <p>2 Ms. Hubbard do specifically as far as</p> <p>3 working on the performance appraisal?</p> <p>4 A. She used to process -- this was in her</p> <p>5 previous position as ASA, I believe --</p> <p>6 process the performance appraisal</p> <p>7 evaluations. She was very familiar with</p> <p>8 the deadlines in terms of getting the</p> <p>9 information to state personnel.</p> <p>10 Q. Now, the job specification for Personnel</p> <p>11 Specialist III has a job code, H3000. What</p> <p>12 does that job code mean?</p> <p>13 A. That's just how it's set up in the</p> <p>14 system -- in the GHRA system. A job code</p> <p>15 has to be established for every position.</p> <p>16 Q. And who is responsible for maintaining the</p> <p>17 job code system?</p> <p>18 A. I don't think there's any one particular</p> <p>19 person responsible. These job codes in</p> <p>20 particular are already set up in the</p> <p>21 system.</p> <p>22 Q. What I mean is does mental health operate</p> <p>23 such a system, or does the State Personnel</p>
Page 35	Page 37
<p>1 A. That's all I can recall at this point.</p> <p>2 Q. How about Ms. Hubbard, what were her</p> <p>3 specialties?</p> <p>4 A. Ms. Hubbard had also the responsibility of</p> <p>5 selection, recruitment and placement. She</p> <p>6 had the responsibility of announcing</p> <p>7 positions, working with the exempt system</p> <p>8 like myself. As I stated earlier,</p> <p>9 Ms. Owens was from the -- her specialty</p> <p>10 area was more from the merit end of it.</p> <p>11 She also had the responsibility of doing</p> <p>12 recruitment at various facilities, whether</p> <p>13 they were universities or colleges as</p> <p>14 well. One of Ms. Hubbard's specialties is</p> <p>15 in the area of performance appraisal. She</p> <p>16 has worked with that in the past and so she</p> <p>17 was very familiar with the performance</p> <p>18 appraisal process.</p> <p>19 Q. And performance appraisal, do you mean when</p> <p>20 an employee is evaluated --</p> <p>21 A. Evaluation.</p> <p>22 Q. -- periodically?</p> <p>23 A. That's correct.</p>	<p>1 Department operate --</p> <p>2 A. They have to go through state personnel.</p> <p>3 It has to be established in the GHRA</p> <p>4 system.</p> <p>5 Q. And that system is operated and maintained</p> <p>6 by the State Personnel Department?</p> <p>7 A. Yes.</p> <p>8 Q. And it would be state personnel that would</p> <p>9 actually assign a job code number for a</p> <p>10 position, then?</p> <p>11 A. We would assign the number. State</p> <p>12 personnel would -- if it's a brand new</p> <p>13 classification would enter the number in</p> <p>14 the GHRA system.</p> <p>15 Q. And what does that system allow -- or what</p> <p>16 is it utilized for? Just keeping track of</p> <p>17 what the specific jobs may be?</p> <p>18 A. It keeps track of the particular job</p> <p>19 family. For example, the personnel series,</p> <p>20 most all of the personnel classifications</p> <p>21 start with the letter H. I don't</p> <p>22 particularly know why. I guess maybe H for</p> <p>23 human resources. But each job family has a</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 38

1 letter that's usually assigned to that  
 2 particular job and the code is also set up  
 3 as well. For example, L for legal. The  
 4 majority of the legal positions start with  
 5 the letter L.  
 6 Q. And off to the side of the job code on the  
 7 right it says pay range, 75. What does  
 8 that mean?  
 9 A. Well, that's just the pay range that that  
 10 particular classification is established.  
 11 Q. And how does -- Well, I take it, then,  
 12 there is a system of pay ranges; correct?  
 13 A. It is the same system that state personnel  
 14 uses. The exempt system -- Our exempt  
 15 system mirrors state personnel. We use the  
 16 exact same pay range as they do.  
 17 Q. For similar type jobs?  
 18 A. Yes.  
 19 Q. But if it's an exempt job, mental health  
 20 does not have to use the exact same  
 21 knowledge, skills and abilities or  
 22 qualifications; correct?  
 23 A. We try to mirror as closely as possible the

Page 39

1 state merit system in terms of looking at  
 2 definitions of a job, the KSAs, also  
 3 minimum qualifications for a particular  
 4 classification.  
 5 Q. Do you know what the state merit  
 6 qualifications are for a Personnel  
 7 Specialist III job?  
 8 A. There is no Personnel Specialist III under  
 9 the state merit system.  
 10 Q. Well, is there a similar type job at the  
 11 state merit system but it has a different  
 12 name?  
 13 A. I think probably, to the best of my  
 14 recollection, it may be a Personnel Manager  
 15 I or possibly a Personnel Analyst I, if I  
 16 remember correctly. That may be as close  
 17 to our Personnel Specialist III.  
 18 Q. And although you try to mirror the merit  
 19 jobs for the exempt jobs, the Department of  
 20 Mental Health doesn't have to adopt all of  
 21 the same qualifications that the merit  
 22 system may have for a similar job?  
 23 A. No. No.

Page 40

1 Q. Now, going back to the pay range of 75.  
 2 I'm assuming there's a numerical number for  
 3 a -- I'm not sure even how to ask that.  
 4 But I guess 75 would represent some type of  
 5 pay range variance?  
 6 A. That is correct.  
 7 Q. Do you know what the pay range variance is  
 8 for --  
 9 A. Not off the top of my head, no.  
 10 Q. And you could have -- If I'm not mistaken,  
 11 you can have different jobs in the same pay  
 12 ranges; correct?  
 13 MR. NIX: I'm sorry, Flynn. Are  
 14 you talking about in the  
 15 exempt system or are you  
 16 talking about --  
 17 Q. Well, let's talk about the exempt system  
 18 itself. In the exempt systems you can have  
 19 different jobs that may share the same pay  
 20 range; correct?  
 21 A. Different classifications may share the  
 22 same pay range.  
 23 Q. Thank you. Different classifications?

Page 41

1 A. Yes.  
 2 Q. Do you know who determines the pay range  
 3 for a particular classification or a  
 4 particular job if it's not in a  
 5 classification?  
 6 MR. NIX: Are you talking about --  
 7 MR. MOZINGO: Exempt. Under the  
 8 exempt system.  
 9 A. You mean in terms of -- Ask me that  
 10 question again. Who maintains?  
 11 Q. Well, who determines -- for the exempt  
 12 system, specifically for the exempt jobs at  
 13 mental health, who determines the pay range  
 14 for a particular classification or for a  
 15 job that may not be within a  
 16 classification?  
 17 A. An existing classification or a new one?  
 18 Q. A new one.  
 19 A. The job evaluation committee would have to  
 20 approve -- approve that.  
 21 Q. Approve the pay range?  
 22 A. Yes.  
 23 Q. What else would the job evaluation

Deposition of Marilyn B. Benson

June 24, 2008

Page 42	Page 44
<p>1 committee have to approve for a new job?</p> <p>2 A. For a new job?</p> <p>3 Q. Yes, ma'am.</p> <p>4 A. They would have to approve the creation of</p> <p>5 the position itself, the salary range, of</p> <p>6 course.</p> <p>7 Q. Right.</p> <p>8 A. Also the job specification.</p> <p>9 Q. And was the job evaluation committee</p> <p>10 required to approve creation, salary range</p> <p>11 and job specifications for new jobs created</p> <p>12 in 2005?</p> <p>13 A. To the best of my knowledge, yes.</p> <p>14 Q. Let me show you, Ms. Benson, what has</p> <p>15 previously been marked Defendant's Exhibit</p> <p>16 46. Can you identify that for me?</p> <p>17 A. It is the job specification for the</p> <p>18 Departmental Assistant Personnel Manager.</p> <p>19 Q. And that is the job that you hold today?</p> <p>20 A. That is correct.</p> <p>21 Q. When did you assume that job? What date?</p> <p>22 A. March of 2006.</p> <p>23 Q. When did you first interview for that job?</p>	<p>1 A. I interviewed on February the 28th, 2006.</p> <p>2 Q. And that's the date given in the letter?</p> <p>3 A. That is correct.</p> <p>4 Q. And who is the letter from, by the way?</p> <p>5 A. It is from the director of human resources,</p> <p>6 Henry Ervin.</p> <p>7 Q. And Henry Ervin was the director of the</p> <p>8 central personnel office back in 2005 and</p> <p>9 2006; correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And he is still the director today?</p> <p>12 A. That is correct.</p> <p>13 Q. Do you know when Mr. Ervin first became the</p> <p>14 director?</p> <p>15 A. I don't remember the exact date.</p> <p>16 Q. And Mr. Ervin is your direct supervisor;</p> <p>17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And he was also your direct supervisor when</p> <p>20 you were a Personnel Specialist III?</p> <p>21 A. That is correct.</p> <p>22 Q. As a Personnel Specialist III when you were</p> <p>23 working on recruiting, selection and</p>
Page 43	Page 45
<p>1 A. I don't remember the exact date that I</p> <p>2 interviewed for the job.</p> <p>3 Q. Would it have been in 2005?</p> <p>4 A. I think it probably was. I received a</p> <p>5 letter, as all individuals receive who are</p> <p>6 scheduled for interviews. And I'm sure</p> <p>7 that that information may have already been</p> <p>8 produced by my attorneys.</p> <p>9 (Plaintiffs' Exhibit 63 was marked</p> <p>10 for identification.)</p> <p>11 Q. Let me show you what I am marking as</p> <p>12 Plaintiffs' Exhibit 63. Is this the letter</p> <p>13 you would have received -- I'll let your</p> <p>14 attorney look at that real quick. Is that</p> <p>15 the letter you would have received inviting</p> <p>16 you for an interview for the job?</p> <p>17 A. Yes.</p> <p>18 Q. What date is that letter?</p> <p>19 A. It has a date of February the 22nd.</p> <p>20 Q. Do you believe that based upon Plaintiffs'</p> <p>21 Exhibit 63 that you would have interviewed</p> <p>22 for that job sometime after February 22nd,</p> <p>23 2006?</p>	<p>1 placement, explain that process to me.</p> <p>2 Because I have received a lot of documents</p> <p>3 regarding the filling of your current</p> <p>4 position. And let me tell you what I</p> <p>5 understand and you correct me if I'm</p> <p>6 belong. What I understand is a job</p> <p>7 announcement will be placed, an</p> <p>8 announcement that a job is open and that</p> <p>9 people will apply for the job and that</p> <p>10 someone will review the applications and a</p> <p>11 determination will be made as to who to</p> <p>12 interview based upon the applications</p> <p>13 received. Am I right so far?</p> <p>14 A. That's correct.</p> <p>15 Q. From what I've described so far, who would</p> <p>16 be the person or persons that would be</p> <p>17 responsible for reviewing the applications</p> <p>18 and then setting up interviews?</p> <p>19 A. Whichever personnel specialist happened to</p> <p>20 be assigned to a particular position at</p> <p>21 that time.</p> <p>22 Q. So it would be one of the personnel</p> <p>23 specialists in the central personnel</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 46	Page 48
<p>1 office?</p> <p>2 A. Most likely for central office positions.</p> <p>3 However, there were some cases when central</p> <p>4 office was not involved in the particular</p> <p>5 classifications being advertised.</p> <p>6 Q. Well, let's say positions were being filled</p> <p>7 at one of the Department of Mental Health's</p> <p>8 facilities, such as Bryce or any of the</p> <p>9 other numerous facilities in Tuscaloosa.</p> <p>10 Would the central personnel office be</p> <p>11 involved in recruiting and selecting</p> <p>12 employees for those facilities?</p> <p>13 A. They could very well be.</p> <p>14 Q. Could the office -- the personnel office</p> <p>15 there at Bryce also do the same function?</p> <p>16 A. For the same position or positions in</p> <p>17 general? I'm not sure --</p> <p>18 Q. I guess what I'm trying to ask is I</p> <p>19 understand from what you said sometimes the</p> <p>20 central office -- the Personnel Specialist</p> <p>21 III at central office might be involved in</p> <p>22 the interview and selection process for a</p> <p>23 job opening at Bryce?</p>	<p>1 announcing and interviewing employees for a</p> <p>2 job opening at a facility, would it be the</p> <p>3 Personnel Specialist III employed there in</p> <p>4 central office that would coordinate that</p> <p>5 placement effort?</p> <p>6 A. It may or it may not.</p> <p>7 Q. Who else at central office would be</p> <p>8 involved?</p> <p>9 A. It could be the director or it could be the</p> <p>10 assistant director.</p> <p>11 Q. Well, specifically let's say Plaintiffs'</p> <p>12 Exhibit 63. We have the letter announcing</p> <p>13 your interview and the letter is signed by</p> <p>14 Henry Ervin. When you were coordinating</p> <p>15 the placement of a position, would you be</p> <p>16 the person in such an example to write</p> <p>17 letters and announce that a person had been</p> <p>18 selected for an interview?</p> <p>19 MR. NIX: Are you asking her</p> <p>20 whether she wrote 63?</p> <p>21 MR. MOZINGO: No.</p> <p>22 MR. NIX: You're just asking in</p> <p>23 general that type of letter?</p>
Page 47	Page 49
<p>1 A. That is correct.</p> <p>2 Q. And I take it by that that sometimes they</p> <p>3 would not be involved?</p> <p>4 A. That is correct.</p> <p>5 Q. Can you explain to me when they would be</p> <p>6 involved and when they wouldn't?</p> <p>7 A. I'll give you an example. For example, the</p> <p>8 facility director position, most all of the</p> <p>9 facility director positions are announced</p> <p>10 and advertised through central office. The</p> <p>11 announcements are usually done through</p> <p>12 central office at the direction of the</p> <p>13 associate commissioner. They are</p> <p>14 advertised and the selection process is</p> <p>15 usually totally done at central office even</p> <p>16 though it may be at the facility.</p> <p>17 Q. Okay. But then some other jobs -- let's</p> <p>18 say lower level jobs at the facility --</p> <p>19 that announcement and interview process may</p> <p>20 be conducted entirely by the personnel</p> <p>21 office there at the facility?</p> <p>22 A. At the facility, that is correct.</p> <p>23 Q. When the central office is involved in</p>	<p>1 MR. MOZINGO: I'm asking in</p> <p>2 general.</p> <p>3 A. In general, yes.</p> <p>4 Q. Now, you got me up to the point of -- well,</p> <p>5 where we left off. And I think where we</p> <p>6 left off was I was about to ask you about</p> <p>7 panels, when you have an interview panel</p> <p>8 and how that process works. So you</p> <p>9 would -- let's say you're assigned -- let's</p> <p>10 say there's a job opening at Bryce. This</p> <p>11 is just a hypothetical. Let's say it's the</p> <p>12 director since you said the director's</p> <p>13 position would be handled by central</p> <p>14 office. So let's say the director's</p> <p>15 position at Bryce is open. And the central</p> <p>16 office would coordinate the recruitment</p> <p>17 effort to fill that position; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that recruitment effort --</p> <p>20 responsibility for that recruitment effort</p> <p>21 would be assigned to someone in the central</p> <p>22 office?</p> <p>23 A. Correct.</p>



Page 50

1 Q. And it could be assigned to any one of the  
2 three Personnel Specialists III?  
3 A. That is correct.  
4 Q. Or the effort could be carried out by  
5 Mr. Ervin himself?  
6 A. Correct.  
7 Q. Did he generally do that? Did Mr. Ervin  
8 generally coordinate the recruitment  
9 efforts, or would the Personnel Specialist  
10 III generally handle that?  
11 A. Most of the time the Personnel Specialist  
12 IIIs would handle that.  
13 Q. So, again, going back to our hypothetical.  
14 Let's assume you, Marilyn Benson, are in  
15 charge of coordinating the effort to fill  
16 the director position at Bryce. You would  
17 post an announcement or see that an  
18 announcement is given for the job opening;  
19 correct?  
20 A. Yes.  
21 Q. And then the applications for that position  
22 would be forwarded to you; correct?  
23 A. Yes. If I am handling that position, they

Page 51

1 would be forwarded to me.  
2 Q. And under our hypothetical you are. You're  
3 handling the position. After you get the  
4 applications, what would you do?  
5 A. After I receive the applications, I go  
6 through to begin evaluating them to see who  
7 meets minimum qualifications and who do  
8 not.  
9 Q. And how would you evaluate them? Is there  
10 some form or process that you use?  
11 A. There is. There's an exempt selection  
12 procedure that we utilize for evaluating  
13 all exempt positions. The job is graded.  
14 The application is graded. Then the  
15 determination is made who will receive an  
16 interview and who will not.  
17 Q. And are the applicants ranked, then, on  
18 their ability to meet the qualifications  
19 for the position?  
20 A. Yes.  
21 Q. And those qualifications would be announced  
22 in the job announcement; correct?  
23 A. That is correct.

Page 52

1 Q. And are they provided a numerical score?  
2 A. They are.  
3 Q. And I guess under that situation you could  
4 have -- somebody could have a perfect  
5 numerical score and then somebody who  
6 doesn't meet qualifications might have a  
7 zero numerical score. Would that  
8 possibility exist?  
9 A. That's possible.  
10 Q. Once you numerically score the applicants,  
11 then what do you do?  
12 A. After the applicants are numerically  
13 scored, I usually contact the supervisor  
14 for that particular position to make them  
15 aware of the number of individuals who  
16 qualify, the number of individuals who did  
17 not qualify and discuss with them in terms  
18 of who they would like to interview.  
19 Q. And would they give you -- the person that  
20 you contact, would he just give you a  
21 number that he would like for you to  
22 interview, let's say the top five or the  
23 top 10?

Page 53

1 A. Usually there is a cutoff point that we  
2 use. For example, if a person has -- if  
3 there are, say, four individuals tied at  
4 the same score, of course, we interview all  
5 four of those individuals. If it's a  
6 natural breaking point in the scoring, say,  
7 for instance, if you have 10 candidates and  
8 say, for instance, maybe five of those  
9 candidates ranging from, say, eight to five  
10 and then you have some three, two, one.  
11 The natural breaking point would be five.  
12 We would cut off at the number five. For  
13 the first round of interviews, that is.  
14 Those individuals in the first round would  
15 be interviewed. And if at such time there  
16 is no individual found to be selected in  
17 the first round, then you would go to the  
18 lower number.  
19 Q. And how is the interview process itself  
20 conducted? And what I'm looking for -- I  
21 think you -- in that process you utilize a  
22 panel; correct?  
23 A. That's correct.

Deposition of Marilyn B. Benson

June 24, 2008

Page 54

1 Q. And how many people are on that panel?  
 2 A. It could vary. It could be anywhere from  
 3 three to five. I've seen as many as eight  
 4 to 10 people on a panel, depending upon the  
 5 level of the position itself.  
 6 Q. Who chooses the panel?  
 7 A. We receive input a lot of times from the  
 8 supervisor. Could be from the associate  
 9 commissioner. The responsibility that HR  
 10 has is to make sure that the panels are --  
 11 have male, female, black, white, making  
 12 sure that there's no discrimination  
 13 involved in the panel members.  
 14 Q. And if you are assigned the responsibility  
 15 of that hypothetical job we discussed, then  
 16 you would coordinate with whoever might be  
 17 the people there at the facility for  
 18 recommendations for panel members and you  
 19 might ask --  
 20 A. When you say people at the facility, can  
 21 you --  
 22 Q. Yes, ma'am. Well, you might ask somebody  
 23 at the facility for recommendations as to

Page 55

1 prospective panel members?  
 2 A. No. I wouldn't ask somebody. I would  
 3 consult the supervisor or the associate  
 4 commissioner.  
 5 Q. Well, in our hypothetical we're talking  
 6 about filling the director at Bryce. So in  
 7 that situation who would you ask?  
 8 A. In that case it would be the associate  
 9 commissioner.  
 10 Q. Would you ask anyone else?  
 11 A. That would be the primary source is the  
 12 associate commissioner, because that person  
 13 would report directly to the associate  
 14 commissioner unless, of course, the  
 15 commissioner himself makes a particular  
 16 request to include someone on the panel.  
 17 Perhaps there's someone with a level of  
 18 expertise that he sees fit that needs to be  
 19 on the panel. He may make a recommendation  
 20 for that individual to be on the panel.  
 21 Q. And once in our hypothetical you have  
 22 identified the number of people that you  
 23 want to interview, then would you, Marilyn

Page 56

1 Benson, be the person who would send out a  
 2 letter such as Plaintiffs' Exhibit 63  
 3 announcing or requesting an interview?  
 4 A. Yes.  
 5 Q. And a person would come in on a given  
 6 assigned date and they would be interviewed  
 7 by the panel?  
 8 A. That is correct.  
 9 Q. Who would prepare the questions for the --  
 10 that the panel would utilize in conducting  
 11 the interview?  
 12 A. The majority of the time we receive input  
 13 from the supervisors in terms of developing  
 14 questions. We may go back to previous  
 15 positions that may have been filled, pulled  
 16 perhaps some old questions and modify them  
 17 to fit the existing classification.  
 18 Q. And in that interview process you would  
 19 give an applicant again a numerical score;  
 20 correct?  
 21 A. Yes.  
 22 Q. And then the -- at the end of the process  
 23 you would add up the scores of your

Page 57

1 applicants to find out who was the -- or  
 2 who were the top scorers?  
 3 A. That's correct.  
 4 Q. And once you have that information, what do  
 5 you do?  
 6 A. After we have that information, we take  
 7 it. We compile it. We compile it from all  
 8 of the panelists. Double-check to make  
 9 sure that there are no numerical mistakes.  
 10 Then a report is generated with the top  
 11 candidates along with the scores, and that  
 12 information is usually shared with the  
 13 immediate supervisor.  
 14 Q. In our hypothetical where Marilyn Benson is  
 15 overseeing the interview process, would  
 16 you, Marilyn Benson, pick the winning  
 17 candidate or select the individual for that  
 18 job opening?  
 19 A. No.  
 20 Q. Who would do that?  
 21 A. That would involve, for example, if two  
 22 people were the top candidates, the  
 23 supervisor may or may not request that the



Deposition of Marilyn B. Benson

June 24, 2008

Page 58	Page 60
<p>1 candidates come back in for a second round</p> <p>2 of interviews. I mean, that is their</p> <p>3 prerogative to do so. After they interview</p> <p>4 for the second round, the supervisor</p> <p>5 usually makes the determination in terms of</p> <p>6 who he or she feels is the best candidate</p> <p>7 to fill the position.</p> <p>8 Q. So the supervisor will make a selection --</p> <p>9 will select the individual to fill that</p> <p>10 position?</p> <p>11 A. That's correct.</p> <p>12 Q. And can that supervisor choose from any of</p> <p>13 the top candidates?</p> <p>14 A. Yes. They may choose from any of the top</p> <p>15 candidates.</p> <p>16 Q. The supervisor is not obligated to pick the</p> <p>17 highest scoring candidate I guess is what</p> <p>18 I'm asking?</p> <p>19 A. Not necessarily.</p> <p>20 Q. He can pick a lower scoring candidate,</p> <p>21 then?</p> <p>22 A. Well, when you say lower scoring, you mean</p> <p>23 lower than the top or --</p>	<p>1 A. No, I don't.</p> <p>2 Q. It was not you?</p> <p>3 A. No, it was not me.</p> <p>4 Q. I'm assuming you -- And I may have this in</p> <p>5 my records and I probably just grabbed the</p> <p>6 wrong copy. But I'm assuming since you</p> <p>7 have that job function, given the language</p> <p>8 that's on the bottom where there's a</p> <p>9 signature line, I'm assuming you would have</p> <p>10 reviewed the job functions and have marked</p> <p>11 yes that you would be able to perform those</p> <p>12 job functions --</p> <p>13 A. Yes.</p> <p>14 Q. -- with or without accommodations?</p> <p>15 A. That's usually given at the time of</p> <p>16 interview.</p> <p>17 Q. Do you remember, in fact, doing that?</p> <p>18 A. I'm sure I did, but I don't specifically</p> <p>19 remember. It's been a while back.</p> <p>20 Q. And are those essential job functions that</p> <p>21 are listed in Plaintiffs' Exhibit 64, do</p> <p>22 those accurately describe your essential</p> <p>23 job function today?</p>
Page 59	Page 61
<p>1 Q. Well, I would assume if you interview a</p> <p>2 given number, then you're going to</p> <p>3 identify -- let's say you interview five.</p> <p>4 Then you'll identify for the supervisor the</p> <p>5 five that were interviewed and how they</p> <p>6 scored; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And he can pick from any of the five;</p> <p>9 correct?</p> <p>10 A. That is correct.</p> <p>11 MR. MOZINGO: Why don't we take a</p> <p>12 break here.</p> <p>13 (Brief recess was taken.)</p> <p>14 (Plaintiffs' Exhibit 64 was marked</p> <p>15 for identification.)</p> <p>16 Q. Ms. Benson, let me show you what I have</p> <p>17 marked Plaintiffs' Exhibit 64. Do you know</p> <p>18 what that document is?</p> <p>19 A. Essential job functions for the</p> <p>20 Departmental Assistant Personnel Manager.</p> <p>21 Q. That being the job you currently hold?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know who prepared that document?</p>	<p>1 A. They appear to be, yes.</p> <p>2 (Plaintiffs' Exhibit 65 was marked</p> <p>3 for identification.)</p> <p>4 Q. Let me show you what I've marked as</p> <p>5 Plaintiffs' Exhibit -- well, before I show</p> <p>6 you Plaintiffs' Exhibit 65, are there any</p> <p>7 essential job functions that you currently</p> <p>8 have today as Departmental Assistant</p> <p>9 Personnel Manager that are not reflected in</p> <p>10 Plaintiffs' Exhibit 64?</p> <p>11 A. They appear to be correct. I don't see the</p> <p>12 supervision of personnel specialists on</p> <p>13 here. That may be the only one I can see</p> <p>14 that's not included.</p> <p>15 Q. And what supervision is that you're</p> <p>16 referring to?</p> <p>17 A. Supervision of personnel specialists,</p> <p>18 Ms. Owens, Ms. Hubbard and Ms. Hogan, three</p> <p>19 individuals.</p> <p>20 Q. And when you were -- But when you were</p> <p>21 initially placed into the position of</p> <p>22 Departmental Assistant Personnel Manager,</p> <p>23 you did not supervise Ms. Owens and</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 62	Page 64
<p>1 Ms. Hubbard; correct?</p> <p>2 A. No.</p> <p>3 Q. You were given supervision of them later</p> <p>4 on?</p> <p>5 A. That is correct.</p> <p>6 Q. In fact, while we're talking about it, I</p> <p>7 think I may have a memorandum that reflects</p> <p>8 that. Let me see if I can locate it real</p> <p>9 quick.</p> <p>10 Yes, I do. I'm going to mark it</p> <p>11 Plaintiffs' Exhibit 66. Can you identify</p> <p>12 that for the record?</p> <p>13 (Plaintiffs' Exhibit 66 was marked</p> <p>14 for identification.)</p> <p>15 A. That's a memorandum to Ms. Hubbard that was</p> <p>16 sent by Mr. Ervin regarding the supervisory</p> <p>17 change for Personnel Specialist III.</p> <p>18 Q. And so you would have begun to supervise</p> <p>19 Ms. Hubbard and Ms. Owens on or about</p> <p>20 November 9th, 2007?</p> <p>21 A. November 19th, 2007.</p> <p>22 Q. Okay. You're right. And that is the</p> <p>23 effective date referenced in the memo?</p>	<p>1 consultants?</p> <p>2 A. Doug Lunsford in particular from state</p> <p>3 personnel, Steve Davis from Bryce and --</p> <p>4 I'm trying to think of the other young</p> <p>5 lady's name. I can't even call her name.</p> <p>6 But she works at Bryce, works directly with</p> <p>7 Mr. Davis.</p> <p>8 Q. So three individuals, one being from state</p> <p>9 personnel and two from the Bryce facility</p> <p>10 in the Department of Mental Health came in</p> <p>11 and recommended that you be given</p> <p>12 supervision over Ms. Hubbard and</p> <p>13 Ms. Owens. Did I understand that</p> <p>14 correctly?</p> <p>15 A. That was part of their recommendation.</p> <p>16 They also made some other recommendations</p> <p>17 as well.</p> <p>18 Q. What other recommendations did they make?</p> <p>19 A. There was a list of recommendations. I'm</p> <p>20 sure that my attorney has those.</p> <p>21 Q. Now, they were not making recommendations</p> <p>22 as part of a wage and class survey, were</p> <p>23 they?</p>
Page 63	Page 65
<p>1 A. That's correct.</p> <p>2 Q. And that is a memo from Henry Ervin to Lynn</p> <p>3 Hubbard --</p> <p>4 A. That is correct.</p> <p>5 Q. -- reflecting the supervisory change?</p> <p>6 A. Correct.</p> <p>7 Q. Who was supervising Ms. Hubbard and</p> <p>8 Ms. Owens prior to November 19th, 2007?</p> <p>9 A. Mr. Ervin.</p> <p>10 Q. Do you know why you were given their</p> <p>11 supervision in November of 2007?</p> <p>12 A. Correct.</p> <p>13 Q. Well, do you know why you were given their</p> <p>14 supervision?</p> <p>15 A. At the request of the associate</p> <p>16 commissioner, the commissioner asked him to</p> <p>17 look at in particularly HR division, not</p> <p>18 only HR, but also IT divisions and make</p> <p>19 recommendations for improvement. He</p> <p>20 consulted several people to come in. They</p> <p>21 came in and reviewed the system and that</p> <p>22 was part of their recommendation.</p> <p>23 Q. And who were the people that came in, the</p>	<p>1 A. No.</p> <p>2 Q. They were not with the Segal Group, were</p> <p>3 they?</p> <p>4 A. They were not with the Segal Group.</p> <p>5 Q. Would the Segal Group have been there at</p> <p>6 the central office around 2007 doing their</p> <p>7 work for their wage and class survey?</p> <p>8 A. I'm trying to remember. I think it was</p> <p>9 April of 2007 when the Segal Group started</p> <p>10 the wage and classification study. If I</p> <p>11 remember correctly, I think it was April</p> <p>12 2007.</p> <p>13 Q. And I'm sorry. Tell me the names again. I</p> <p>14 should have written it down. The three</p> <p>15 individuals that came in.</p> <p>16 A. Steve Davis, Doug Lunsford -- and I'm still</p> <p>17 trying to remember.</p> <p>18 MS. HUBBARD: Deborah Marks.</p> <p>19 A. Deborah Marks, yes.</p> <p>20 Q. And so they did not come in as part of a</p> <p>21 wage and class study?</p> <p>22 A. No.</p> <p>23 Q. Do you know why they were there, then?</p>

Page 66	Page 68
<p>1 A. From what I was told, the commissioner 2 wanted the associate commissioner of 3 administration to look at all of the 4 divisions that he was responsible for, not 5 only just HR, IT and other divisions, and 6 make recommendations for improvement. From 7 my understanding it was the decision for 8 Mr. Bennett to recommend that these 9 consultants come in, take a look at our 10 overall area and make recommendations for 11 any improvements that they saw. 12 Q. And these consultants, who are you 13 referring to? 14 A. The ones that I just stated to you; Steve 15 Davis, Doug Lunsford and Deborah Marks. 16 Q. So it's your understanding, then, that 17 Mr. Davis, Mr. Lunsford and Ms. Marks would 18 have recommended that supervision of 19 Ms. Owens and Ms. Hubbard be changed from 20 Mr. Ervin to you? 21 A. It is my understanding that that was part 22 of their recommendation in addition to 23 other recommendations as well.</p>	<p>1 communication between central office and 2 the facility. I know that they offered 3 suggestions for improving the lines of 4 communication between central office and 5 the facilities. Like I say, I can't 6 remember every single recommendation that 7 they gave. 8 Q. Did you ever talk to Mr. Davis, 9 Mr. Lunsford or Ms. Marks about their 10 recommendations? 11 A. No. I never spoke with them about their 12 recommendations. 13 Q. Do you know specifically who they would 14 have given their recommendation to, i.e., 15 that supervision of Ms. Owens and 16 Ms. Hubbard be transferred? 17 A. Well, at the request of the associate 18 commissioner, Mr. Bennett, I'm sure that 19 the recommendations were given to him. 20 Q. Are you aware of why they recommended that 21 the supervision of Ms. Owens and 22 Ms. Hubbard be transferred? 23 A. I am not.</p>
Page 67	Page 69
<p>1 Q. And when this -- Well, do you know when 2 that recommendation was given to Mr. Ervin 3 or -- 4 A. I don't recall -- 5 Q. -- to mental health? 6 A. -- exact day, no. 7 Q. But when that transition in supervision was 8 made, you had already been serving as the 9 Departmental Assistant Personnel Manager 10 for approximately a year and a half? 11 A. I was appointed to the position March of 12 '06. 13 Q. Which would have been approximately a year 14 and a half from November 19th, 2007? 15 A. Approximately. 16 Q. What other recommendations did Mr. Davis, 17 Mr. Lunsford and Ms. Marks make? 18 A. There was a memo outlining several 19 recommendations. I can't remember them one 20 by one. I know there was several areas 21 that they addressed in terms of how we 22 handle performance appraisals within the 23 office, in terms of opening up the lines of</p>	<p>1 Q. Now let me direct your attention to 2 Plaintiffs' Exhibit 65. Can you identify 3 that document for me? 4 A. Knowledge, skills and abilities for the 5 Departmental Assistant Personnel Manager. 6 MR. NIX: You're just asking her 7 to read the title of it, or 8 are you asking her if she has 9 personal knowledge of the 10 document? 11 Q. Well, that document would reflect the, I 12 guess, necessary knowledge, skills and 13 abilities for the individual holding the 14 position of Assistant Departmental 15 Personnel Manager? 16 A. That is correct. 17 MR. NIX: Again, let me ask you to 18 clarify that, Flynn, if you 19 don't mind. Are you asking 20 her whether she has personal 21 knowledge of the document and 22 what's on it, or are you 23 asking her just to review the</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 70

1 document and give you her  
2 impression of it?  
3 MR. MOZINGO: Well, I'm asking her  
4 does she understand the  
5 knowledge, skills and  
6 abilities that are reflected  
7 in Plaintiffs' Exhibit 65 as  
8 those knowledge, skills and  
9 abilities that are necessary  
10 to perform the position of  
11 Departmental Assistant  
12 Personnel Manager.  
13 A. I am.  
14 Q. Okay. And they do reflect that; is that  
15 correct?  
16 A. To the best of my knowledge, yes.  
17 Q. And did you prepare Plaintiffs' Exhibit 65?  
18 A. No.  
19 Q. Do you know who did?  
20 A. Hold on just a second. Let me look. I  
21 prepared the job specification, and as a  
22 part of the job specification, knowledge,  
23 skills and abilities are on the job

Page 71

1 specification.  
2 Q. So do you believe that --  
3 A. I did not prepare this document, if that's  
4 what you're asking.  
5 Q. But are the knowledge, skills and abilities  
6 in Plaintiffs' Exhibit 65 consistent with  
7 the KSAs -- or the KSA from the job  
8 specification for the Departmental  
9 Assistant Personnel Manager?  
10 A. They seem to be pretty consistent. They're  
11 not all-inclusive. But as stated earlier,  
12 this particular spec is not all-inclusive.  
13 Any one position may or may not include all  
14 of the duties.  
15 Q. Now, the language you read from, though, is  
16 language that's contained in Plaintiffs'  
17 Exhibit 62; correct?  
18 A. Correct.  
19 MR. NIX: You mean exactly or --  
20 because she -- I'm not sure  
21 that I understand her  
22 testimony. But she said there  
23 appear to be some differences,

Page 72

1 but I don't know what she was  
2 talking about, so --  
3 MR. MOZINGO: Well, I'll clear it  
4 up.  
5 Q. When you read the language any position may  
6 not be inclusive of all duties, you're  
7 referring to the language that's contained  
8 in Plaintiffs' Exhibit 62?  
9 A. That is correct. But all specifications  
10 usually have this particular phrase. I'm  
11 looking at this. I don't see why that's  
12 not in there. But as a general rule, this  
13 phrase would be included on all job specs.  
14 Q. But that phrase -- the phrase any one  
15 position may not be inclusive -- and we're  
16 paraphrasing. I'm not reading it exactly.  
17 But any one position may not be inclusive  
18 of all duties listed is not contained in  
19 the specification for Plaintiffs' Exhibit  
20 46?  
21 A. I don't see it.  
22 Q. Ms. Benson, was the -- to your knowledge,  
23 was the review or approvals made by

Page 73

1 Mr. Davis, Lunsford and Ms. Marks, was that  
2 in conjunction with the wage and class  
3 survey, or was that some totally separate  
4 endeavor they were working on?  
5 A. It's my understanding that that was totally  
6 separate, to the best of my knowledge.  
7 Q. And they would have -- Let me back up and  
8 make sure. I think you told me that  
9 Mr. Bennett would have asked Mr. Lunsford,  
10 Davis and Ms. Marks to come in and conduct  
11 their evaluation, whatever it consisted  
12 of --  
13 A. That is correct.  
14 Q. -- and make some recommendations?  
15 And Mr. Bennett was whom at the time?  
16 A. Mr. Bennett was the associate commissioner  
17 for administration and is the associate  
18 commissioner for administration.  
19 Q. Today he is?  
20 A. That is correct.  
21 Q. And Mr. Bennett replaced whom?  
22 A. He replaced Mr. Otha Dillihay.  
23 Q. So Mr. Davis, Lunsford and Ms. Marks'



Page 74	Page 76
<p>1 recommendations would have been made to</p> <p>2 Mr. Bennett?</p> <p>3 A. That is correct.</p> <p>4 (Plaintiffs' Exhibit 67 was marked</p> <p>5 for identification.)</p> <p>6 Q. Let me show you what I am marking as</p> <p>7 Plaintiffs' Exhibit 67. Can you identify</p> <p>8 that for the record, please?</p> <p>9 A. That is my application for the Departmental</p> <p>10 Assistant Personnel Manager.</p> <p>11 Q. And is the application dated? In other</p> <p>12 words, would it reflect when it was</p> <p>13 submitted for consideration?</p> <p>14 A. There is a date down at the bottom. It</p> <p>15 looks like faxed September the 29th, 2005.</p> <p>16 Q. Can you flip over to the fourth page. Is</p> <p>17 there any information on that page that</p> <p>18 would reflect when the application was</p> <p>19 likely submitted?</p> <p>20 A. September the 29th, 2005.</p> <p>21 Q. And do you believe that would have been</p> <p>22 about the day it was submitted for</p> <p>23 consideration?</p>	<p>1 A. From AUM in Montgomery.</p> <p>2 Q. And that would have been in 1987?</p> <p>3 A. That is correct.</p> <p>4 Q. It says concentration in personnel. Can</p> <p>5 you concentrate or obtain a concentration</p> <p>6 for a master's degree?</p> <p>7 A. Yes, you can. The majority of your hours</p> <p>8 can be in any particular specialty area.</p> <p>9 Mine just happened to have been in the area</p> <p>10 of personnel.</p> <p>11 Q. Now, the employment history that is listed</p> <p>12 on your resume, is that an inclusive</p> <p>13 employment history between --</p> <p>14 A. Excuse me.</p> <p>15 Q. Do you need --</p> <p>16 A. That's okay. I just got some water. I'm</p> <p>17 sorry. Can you ask me that again?</p> <p>18 Q. Yes, ma'am. My question was, the</p> <p>19 employment history that's reflected on your</p> <p>20 resume, it begins basically January 1983 as</p> <p>21 office manager for Neuropsychiatry -- or</p> <p>22 Psychiatry Associates and goes all the way</p> <p>23 to the present date, which I assume based</p>
Page 75	Page 77
<p>1 A. Yes.</p> <p>2 Q. And is this application -- the information</p> <p>3 that has been submitted therein, is it true</p> <p>4 and correct?</p> <p>5 A. It is.</p> <p>6 Q. And it would provide your -- provide</p> <p>7 biographical and work history for you?</p> <p>8 A. That is correct.</p> <p>9 Q. And attached and made part of that</p> <p>10 application is your resume, is it not?</p> <p>11 A. Correct.</p> <p>12 Q. And is your resume true and correct?</p> <p>13 A. It is.</p> <p>14 Q. And according to your resume, you have a</p> <p>15 bachelor's degree in health services</p> <p>16 administration from Auburn University?</p> <p>17 A. That is correct.</p> <p>18 Q. And did you attend the main campus in</p> <p>19 Auburn, or did you attend AUM for that</p> <p>20 degree?</p> <p>21 A. I attended the main campus in Auburn.</p> <p>22 Q. And then you subsequently obtained a</p> <p>23 master's degree in public administration?</p>	<p>1 upon the application would have been</p> <p>2 September 2005. And my question was, is</p> <p>3 that an inclusive employment history for</p> <p>4 the period from January 1983 to September</p> <p>5 2005?</p> <p>6 A. That is inclusive up to the time that I</p> <p>7 applied for the Assistant Departmental</p> <p>8 Personnel Director.</p> <p>9 Q. In other words, that resume would list all</p> <p>10 of your jobs that you held during that time</p> <p>11 period?</p> <p>12 A. That is correct.</p> <p>13 Q. Did you begin working at Neuropsychiatry</p> <p>14 Associates following graduation, or was</p> <p>15 there some time period between your</p> <p>16 graduation from Auburn and that employment?</p> <p>17 A. It was after graduation.</p> <p>18 Q. How long afterward?</p> <p>19 A. Actually, I interned with Neuropsychiatry</p> <p>20 Associates in Opelika and I was employed</p> <p>21 with them after graduation.</p> <p>22 Q. And what was your job at that office?</p> <p>23 A. At Neuropsychiatry Associates?</p>

Page 78	Page 80
<p>1 Q. Yes.</p> <p>2 A. I was the office manager.</p> <p>3 Q. And that would be a private doctor's</p> <p>4 office; is that correct?</p> <p>5 A. Yes. A psychiatrist's office.</p> <p>6 Q. And how many psychiatrists were part of</p> <p>7 that office?</p> <p>8 A. There was one senior partner, Chester</p> <p>9 Jenkins, and he had two other psychiatrists</p> <p>10 that worked with him in his practice.</p> <p>11 Q. Would they have been partners or</p> <p>12 associates?</p> <p>13 A. Associates.</p> <p>14 Q. So it was a three psychiatrist office?</p> <p>15 A. Yes.</p> <p>16 Q. And how many other employees or individuals</p> <p>17 worked in that office besides the</p> <p>18 psychiatrist?</p> <p>19 A. It's been a while. I think there were</p> <p>20 about a total of five.</p> <p>21 Q. Including yourself?</p> <p>22 A. Yes.</p> <p>23 MR. NIX: You mean other than the</p>	<p>1 A. I don't know.</p> <p>2 Q. But the office was closed down?</p> <p>3 A. Yes, it was.</p> <p>4 Q. And then it appears that you were also</p> <p>5 working with the Alabama Department of</p> <p>6 Mental Health and Mental Retardation during</p> <p>7 some of the same time period you were</p> <p>8 working with Neuropsychiatry Associates; is</p> <p>9 that correct?</p> <p>10 A. As listed on my resume, 8/83 to 8/84.</p> <p>11 Q. Those two dates would overlap, wouldn't</p> <p>12 they?</p> <p>13 A. Yes. They appear to. I'm looking at this</p> <p>14 now. Let me refer back to the application</p> <p>15 because that -- this particular office</p> <p>16 closed. Now, I was not working at -- I</p> <p>17 worked at the Department of Mental Health</p> <p>18 after the office closed. That's a</p> <p>19 misprint. I'm looking at the application.</p> <p>20 That's a typo. I was no longer working at</p> <p>21 Neuropsychiatry Associates at the time that</p> <p>22 I was working with the Department of Mental</p> <p>23 Health.</p>
Page 79	Page 81
<p>1 doctors or in addition to the</p> <p>2 doctors?</p> <p>3 MR. MOZINGO: Other than the</p> <p>4 doctors.</p> <p>5 Q. So including you there would have been five</p> <p>6 employees in the office?</p> <p>7 A. Correct.</p> <p>8 Q. And you held that job for approximately a</p> <p>9 year and a half; correct?</p> <p>10 A. As listed on my resume.</p> <p>11 Q. Which would be a correct date?</p> <p>12 A. January of '83 to August of '84.</p> <p>13 Q. Why did you leave your work with that</p> <p>14 medical office?</p> <p>15 A. That particular practice was discontinued.</p> <p>16 Chester Jenkins moved and he was no longer</p> <p>17 affiliated with it, so that meant I had to</p> <p>18 seek employment elsewhere. They closed</p> <p>19 their office.</p> <p>20 Q. Chester Jenkins was the partner?</p> <p>21 A. The senior partner, the psychiatrist. That</p> <p>22 is correct.</p> <p>23 Q. Do you know why he moved?</p>	<p>1 Q. You did not begin working at the Department</p> <p>2 of Mental Health until you had left --</p> <p>3 A. That is correct.</p> <p>4 Q. -- Neuropsychiatry Associates?</p> <p>5 A. That is correct.</p> <p>6 Q. And what was your first job with the</p> <p>7 Department of Mental Health?</p> <p>8 A. Research assistant.</p> <p>9 Q. What would a research assistant do or --</p> <p>10 A. As stated on my resume, the majority of my</p> <p>11 work was with the community mental health</p> <p>12 centers. I traveled to the community</p> <p>13 mental health centers within the state of</p> <p>14 Alabama doing management studies, working</p> <p>15 with wage and classification, writing job</p> <p>16 descriptions for the employees at the</p> <p>17 facilities.</p> <p>18 Q. And that was -- And you were doing all of</p> <p>19 that as a research assistant?</p> <p>20 A. Yes.</p> <p>21 Q. Now, were you working in the central</p> <p>22 personnel office at that time?</p> <p>23 A. No, I was not. That particular job was</p>



Page 82	Page 84
<p>1 with the planning and policy section. That</p> <p>2 was before I moved to personnel.</p> <p>3 Q. So you were working in another department</p> <p>4 at the Mental Health Department?</p> <p>5 A. Not another department, but another</p> <p>6 section. That's just a section within the</p> <p>7 Department of Mental Health. Planning and</p> <p>8 special projects is what it was called.</p> <p>9 Q. Does that section still exist?</p> <p>10 A. No, it does not.</p> <p>11 Q. Who does the work now that that section</p> <p>12 used to do?</p> <p>13 A. Well, as a matter of fact, that particular</p> <p>14 section was dissolved. Some of the duties</p> <p>15 and responsibilities shifted to the</p> <p>16 personnel division. However, we no longer</p> <p>17 do wage and classification studies at the</p> <p>18 community mental health centers.</p> <p>19 Q. And so the work that you were doing for</p> <p>20 that section, did it -- was it specifically</p> <p>21 for the community mental health centers?</p> <p>22 A. It was for the community mental health</p> <p>23 centers. That's correct.</p>	<p>1 A. That's correct.</p> <p>2 Q. Was the pay grade changed?</p> <p>3 A. I don't remember.</p> <p>4 Q. So you were working as a research</p> <p>5 assistant. There was a wage and class</p> <p>6 survey. And as a result of that survey</p> <p>7 your title was changed to planning</p> <p>8 specialist?</p> <p>9 A. Yes.</p> <p>10 Q. Did your job duties change?</p> <p>11 A. Some of the job duties changed. They were</p> <p>12 expanded in terms of doing wage and</p> <p>13 classification studies with the mental</p> <p>14 health centers.</p> <p>15 Q. Okay. You were still doing a lot of work</p> <p>16 with mental health centers?</p> <p>17 A. Yes. Yes. During that time.</p> <p>18 Q. And when you say mental health centers, can</p> <p>19 you describe that for me?</p> <p>20 A. The community mental health centers.</p> <p>21 Q. And what are they?</p> <p>22 A. Well, I have a list that's been provided on</p> <p>23 my resume. We went to JBS, Jefferson</p>
Page 83	Page 85
<p>1 Q. And then from that position as a research</p> <p>2 assistant you became a planning specialist;</p> <p>3 is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And that would have been around -- well, I</p> <p>6 guess August 19 -- I'm sorry -- November</p> <p>7 1987?</p> <p>8 A. 8/84 through November of '87.</p> <p>9 Q. I'm sorry. I was reading that date wrong.</p> <p>10 So around August 1984 you became a</p> <p>11 planning specialist?</p> <p>12 A. That's correct.</p> <p>13 Q. What section were you working in at that</p> <p>14 time?</p> <p>15 A. I believe it was still under grants and</p> <p>16 special projects. This was during the time</p> <p>17 of wage and class and the title changed.</p> <p>18 Wage and class made a recommendation that</p> <p>19 my title be changed or reallocated to a</p> <p>20 planning specialist.</p> <p>21 Q. So it's not that then you were moved into</p> <p>22 another position; it's just the title of</p> <p>23 your position was changed?</p>	<p>1 Blount, St. Clair in Birmingham;</p> <p>2 Chilton-Shelby; Mobile Community Mental</p> <p>3 Health Center; Central Alabama</p> <p>4 Comprehensive Health Center; Cahaba</p> <p>5 Regional Mental Health Center in Selma;</p> <p>6 Cherokee, Etowah, Dekalb; the Bridge;</p> <p>7 Northwest. All of the community mental</p> <p>8 health centers that I did any type of</p> <p>9 training activities related to wage and</p> <p>10 classification or performance appraisal</p> <p>11 trainings are listed on my resume.</p> <p>12 Q. What section were you working in when you</p> <p>13 became a planning specialist or when your</p> <p>14 title changed?</p> <p>15 A. As I was saying earlier, still in grants</p> <p>16 and special projects.</p> <p>17 Q. When did you go to work for the central</p> <p>18 personnel office?</p> <p>19 A. 12/87 as indicated on my resume.</p> <p>20 Q. Would that have been the same time that</p> <p>21 the -- Let me back up. Let me write that</p> <p>22 down because I'm forgetting it. What was</p> <p>23 the name of the prior section? Planning?</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 86	Page 88
<p>1 A. Grants and special projects.</p> <p>2 Q. Grants and special projects?</p> <p>3 A. That's correct.</p> <p>4 Q. Which was the first section at the</p> <p>5 Department of Mental Health you ever worked</p> <p>6 in?</p> <p>7 A. That's correct.</p> <p>8 Q. And you subsequently went to work in the</p> <p>9 central personnel office?</p> <p>10 A. That's correct.</p> <p>11 Q. And that would have been December 1987?</p> <p>12 A. Right.</p> <p>13 Q. Is that the time that grants and special</p> <p>14 projects, that section was phased out?</p> <p>15 A. I think it was. It was dissolved during</p> <p>16 that time.</p> <p>17 Q. So was your job, then, just basically moved</p> <p>18 to another section?</p> <p>19 A. The majority of it was, yes.</p> <p>20 Q. And I see at that time that you -- your</p> <p>21 title became personnel specialist?</p> <p>22 A. Correct.</p> <p>23 Q. Where it had previously been planning</p>	<p>1 Q. Did your job functions remain the same once</p> <p>2 you became a personnel specialist?</p> <p>3 A. They were more inclusive. The duties and</p> <p>4 responsibilities were expanded.</p> <p>5 Q. Now, the mental health centers that you</p> <p>6 mentioned, when you did your work at the</p> <p>7 mental health centers, would that mean you</p> <p>8 would go to those centers -- and let's say</p> <p>9 there were job openings -- that you would</p> <p>10 carry out the interview process and</p> <p>11 coordinate the hiring process for job</p> <p>12 openings at the mental health centers?</p> <p>13 A. It just depended on what we were doing at</p> <p>14 that time with the community mental health</p> <p>15 center. From time to time we were called</p> <p>16 in to do wage and classification studies.</p> <p>17 We may have been called in to do employee</p> <p>18 attitude surveys. I would travel on an</p> <p>19 average of about three to four days a week,</p> <p>20 sometimes as much as like three to four</p> <p>21 months straight. And I even did this even</p> <p>22 when I was carrying my first child all the</p> <p>23 way from north Alabama to south Alabama.</p>
Page 87	Page 89
<p>1 specialist?</p> <p>2 A. That's correct.</p> <p>3 Q. Was the title of your job just changed, or</p> <p>4 were you promoted to a different job?</p> <p>5 A. It's been so long I can't really recall. I</p> <p>6 think I was promoted to the personnel</p> <p>7 specialist position. But, of course, all</p> <p>8 of that's in my file.</p> <p>9 Q. So you think that was a position, though,</p> <p>10 that you would have applied for and had</p> <p>11 gone through an interview process to</p> <p>12 obtain?</p> <p>13 A. I'll be honest with you. I don't recall</p> <p>14 it's been so long.</p> <p>15 Q. We'd just have to look at your personnel</p> <p>16 file, then, to try to figure it out?</p> <p>17 A. I'm sure all that information is in my</p> <p>18 file.</p> <p>19 Q. Since you're not sure, would it likewise be</p> <p>20 possible that your title as planning</p> <p>21 specialist was simply changed to personnel</p> <p>22 specialist?</p> <p>23 A. I don't remember.</p>	<p>1 We would go in and we would do management</p> <p>2 studies at the request of each one of the</p> <p>3 community mental health center directors.</p> <p>4 We would come in, interview their</p> <p>5 employees. There were times when we would</p> <p>6 interview as many as maybe 25 people in one</p> <p>7 day. We would write job descriptions for</p> <p>8 these individuals. We would also look at</p> <p>9 their policies and procedures for that</p> <p>10 particular community mental health center.</p> <p>11 We would make recommendations for</p> <p>12 improvement in their policies and</p> <p>13 procedures. We would conduct attitude</p> <p>14 surveys trying to get a feel for their</p> <p>15 employees in terms of whether they had any</p> <p>16 disgruntles or, you know, any problems with</p> <p>17 the particular center. And we would make</p> <p>18 recommendations to the executive director</p> <p>19 for improvements. We would come in and we</p> <p>20 would do a complete personnel action plan</p> <p>21 for each one of the community mental health</p> <p>22 centers.</p> <p>23 Q. So I understand, then, that your job had a</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 90	Page 92
<p>1 lot of traveling involved in it?</p> <p>2 A. It did.</p> <p>3 Q. But your primary office was still at the</p> <p>4 main mental health headquarters in</p> <p>5 Montgomery?</p> <p>6 A. Based at central office. That's correct.</p> <p>7 Q. Central office?</p> <p>8 A. Correct.</p> <p>9 Q. And let's make sure that you and I are on</p> <p>10 the same page when we talk about central</p> <p>11 office. Central office is the -- I guess</p> <p>12 the same as the headquarters for the</p> <p>13 Department of Mental Health?</p> <p>14 A. That's correct.</p> <p>15 Q. And that would be the place where the</p> <p>16 commissioner has his office?</p> <p>17 A. That is correct.</p> <p>18 Q. Because the Department of Mental Health has</p> <p>19 numerous facilities --</p> <p>20 A. Has other facilities. At that particular</p> <p>21 time we had 14 facilities located</p> <p>22 throughout the state of Alabama. But, of</p> <p>23 course, when consolidation came, that</p>	<p>1 A. What do you mean on a transient nature?</p> <p>2 Q. You would have gone to the facility --</p> <p>3 A. At their request?</p> <p>4 Q. No. On a transient nature in the sense</p> <p>5 that your main -- you worked at the central</p> <p>6 office, but you would travel to the</p> <p>7 facility --</p> <p>8 A. That is correct.</p> <p>9 Q. -- to do your work?</p> <p>10 The facilities that you have listed on</p> <p>11 your resume where you would have done work,</p> <p>12 is that an inclusive list?</p> <p>13 A. I think it's pretty inclusive, yes. It not</p> <p>14 only has HR functions, training and</p> <p>15 experience, but it also has the employee</p> <p>16 assistance program training, and that</p> <p>17 happened to have been part of the program</p> <p>18 that I worked with when I was in grants and</p> <p>19 special projects. We would go throughout</p> <p>20 the state and we would do employee</p> <p>21 assistance training with various</p> <p>22 supervisors, various state agencies. Even</p> <p>23 Auburn University we did employee</p>
Page 91	Page 93
<p>1 number was reduced.</p> <p>2 Q. And from what I learned in Mr. Ervin's</p> <p>3 deposition, many of your -- or some of your</p> <p>4 mental health facilities outside of</p> <p>5 Montgomery, such as Bryce and Partlow, have</p> <p>6 their own personnel offices?</p> <p>7 A. That is correct.</p> <p>8 Q. But there is a personnel office at the</p> <p>9 central office which is called central</p> <p>10 personnel?</p> <p>11 A. That is correct.</p> <p>12 Q. And that's where you work?</p> <p>13 A. That's correct.</p> <p>14 Q. So any work that you would have done at</p> <p>15 these different mental health facilities</p> <p>16 that are listed -- Well, let me strike it.</p> <p>17 Any work that you would have done at</p> <p>18 the different facilities that are listed on</p> <p>19 your resume, whether it be human resource</p> <p>20 training activities or employee's assistant</p> <p>21 program training and experience, that would</p> <p>22 have been -- you would have been there on a</p> <p>23 transient nature?</p>	<p>1 assistance training with their president</p> <p>2 and their executive staff.</p> <p>3 Q. Okay. And the facilities that you've</p> <p>4 listed, I notice you have dates out next to</p> <p>5 each.</p> <p>6 A. That's correct.</p> <p>7 Q. And what does the date represent?</p> <p>8 A. That means the date that we went to do the</p> <p>9 training.</p> <p>10 Q. And it looks like most of your traveling</p> <p>11 that you did would have been in 1983, 1984,</p> <p>12 1985 and some in 1987; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And after 1987 were you primarily working</p> <p>15 exclusively out of the central office?</p> <p>16 A. There was still some traveling, but not</p> <p>17 nearly to the extent that it was before</p> <p>18 that. Most of the communication was done</p> <p>19 by telephone or upon the request of each</p> <p>20 one of the agencies.</p> <p>21 Q. So after 1987 you were primarily in the</p> <p>22 central office --</p> <p>23 A. That is correct.</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 94	Page 96
<p>1 Q. -- most of the time?</p> <p>2 A. Uh-huh (positive response).</p> <p>3 Q. Is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Now, when did Henry Ervin become your</p> <p>6 supervisor?</p> <p>7 A. I don't remember the exact date.</p> <p>8 Q. But is it true that he became your</p> <p>9 supervisor following a job opening and</p> <p>10 interview process where you -- people would</p> <p>11 have submitted applications to be the -- to</p> <p>12 have the job that Henry Ervin has?</p> <p>13 MR. NIX: Let me object to the</p> <p>14 form.</p> <p>15 Q. That was a bad question. Let me try</p> <p>16 again. It's my understanding -- and,</p> <p>17 again, this comes from deposing</p> <p>18 Mr. Ervin -- that the position of</p> <p>19 department personnel manager, he applied</p> <p>20 for that job and was selected for that job</p> <p>21 following an interview process?</p> <p>22 A. That is correct.</p> <p>23 Q. And it's my understanding that you also</p>	<p>1 A. No. No.</p> <p>2 Q. At the time that you applied for the</p> <p>3 central personnel manager's position, what</p> <p>4 was your job title?</p> <p>5 A. Ask me that question again.</p> <p>6 Q. When you applied for the personnel</p> <p>7 manager's position --</p> <p>8 A. Okay. I was a Personnel Specialist III.</p> <p>9 That was my classification.</p> <p>10 Q. You were a Personnel Specialist III at that</p> <p>11 time?</p> <p>12 A. That's correct.</p> <p>13 Q. When did you become a Personnel Specialist</p> <p>14 III?</p> <p>15 A. As indicated on my resume, December of '87.</p> <p>16 Q. Was the personnel specialist classification</p> <p>17 established around December 1987, to your</p> <p>18 knowledge?</p> <p>19 A. To the best of my knowledge it was.</p> <p>20 Q. So you were -- became a Personnel</p> <p>21 Specialist III when that classification</p> <p>22 system was first established; is that true?</p> <p>23 A. I don't know that the position was first</p>
Page 95	Page 97
<p>1 applied for that job; is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And it's my understanding from Mr. Ervin's</p> <p>4 deposition that you and him and other</p> <p>5 people applied for that job at the same</p> <p>6 time?</p> <p>7 A. That's correct.</p> <p>8 Q. But Mr. Ervin was selected for the job?</p> <p>9 A. That's correct.</p> <p>10 Q. Were you actually interviewed for the</p> <p>11 position that was eventually given to</p> <p>12 Mr. Ervin?</p> <p>13 A. Yes, I was.</p> <p>14 Q. Do you know if you were one of the</p> <p>15 finalists for that position?</p> <p>16 A. I'm not privy to that information. I have</p> <p>17 no idea how I came out in terms of</p> <p>18 ranking. I just know that I was not</p> <p>19 selected for the position.</p> <p>20 Q. Well, have you ever asked at any point in</p> <p>21 time how you came out in the rankings?</p> <p>22 A. No.</p> <p>23 Q. Never asked?</p>	<p>1 established. As far as I can remember, the</p> <p>2 position was already in existence. You</p> <p>3 know, I was just not the individual</p> <p>4 appointed to that particular classification</p> <p>5 until December of '87.</p> <p>6 Q. Now, you went from being a Personnel</p> <p>7 Specialist III to Departmental Assistant</p> <p>8 Personnel Manager; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. What happened to your old Personnel</p> <p>11 Specialist III position after you received</p> <p>12 your promotion?</p> <p>13 A. That position was downgraded to a Personnel</p> <p>14 Specialist II.</p> <p>15 Q. And who was that position given to?</p> <p>16 A. Brook Hogan now occupies that position.</p> <p>17 Q. Now, when you say it was downgraded, what</p> <p>18 do you mean it was downgraded?</p> <p>19 A. Well, it was originally a Personnel</p> <p>20 Specialist III. It was lowered to a</p> <p>21 Personnel Specialist II position.</p> <p>22 Q. Do you know why it was lowered?</p> <p>23 A. I think there was a point of funding. We</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 98	Page 100
<p>1 were looking at creating another position</p> <p>2 within the section. And if I remember</p> <p>3 correctly, I think it was a Personnel</p> <p>4 Specialist I, if my memory serves me</p> <p>5 correctly.</p> <p>6 Q. But am I correct it's your testimony that</p> <p>7 it was downgraded due to funding</p> <p>8 considerations?</p> <p>9 A. As far as I can remember, yes.</p> <p>10 Q. Any other considerations other than</p> <p>11 funding?</p> <p>12 A. Not that I can remember.</p> <p>13 Q. When Ms. Hogan became the Personnel</p> <p>14 Specialist II after your position was</p> <p>15 downgraded, did Ms. Hogan assume the duties</p> <p>16 and responsibilities that you previously</p> <p>17 had as a Personnel Specialist III?</p> <p>18 A. The majority of them, yes.</p> <p>19 Q. And when you became Departmental Assistant</p> <p>20 Personnel Manager, did you assume any new</p> <p>21 duties, or did you continue to do some of</p> <p>22 the same duties you previously had?</p> <p>23 A. I had to assume the duties of the Personnel</p>	<p>1 State personnel would have a meeting with</p> <p>2 all the managers. So from time to time I</p> <p>3 would attend those meetings.</p> <p>4 Q. And what would you do in attending those</p> <p>5 meetings? Did you have any particular</p> <p>6 assignment at the meetings, or did you just</p> <p>7 attend --</p> <p>8 A. Just represent the department, the</p> <p>9 Department of Mental Health. And I would</p> <p>10 usually come back and make a report to the</p> <p>11 director of personnel.</p> <p>12 Q. So those meetings would involve all state</p> <p>13 personnel --</p> <p>14 A. Personnel managers.</p> <p>15 Q. -- personnel managers?</p> <p>16 A. That is correct.</p> <p>17 Q. Which would mean personnel managers from</p> <p>18 other departments such as, I guess,</p> <p>19 transportation or Department of Health or</p> <p>20 what have you?</p> <p>21 A. That's correct.</p> <p>22 Q. Would anyone from mental health attend with</p> <p>23 you?</p>
Page 99	Page 101
<p>1 Specialist II until that position was</p> <p>2 filled. And at the point in time that</p> <p>3 Personnel Specialist II position was</p> <p>4 filled, that's when Ms. Hogan assumed those</p> <p>5 duties and responsibilities. I assumed new</p> <p>6 duties.</p> <p>7 Q. Are there any duties that you had as a</p> <p>8 Personnel Specialist III that you continue</p> <p>9 to have today as a Departmental Assistant</p> <p>10 Personnel Manager?</p> <p>11 A. One that I'm looking at may be attending</p> <p>12 staff meetings, state personnel. From time</p> <p>13 to time I know that I did attend staff</p> <p>14 meetings as a Personnel Specialist III.</p> <p>15 Q. What kind of staff meetings would you</p> <p>16 attend?</p> <p>17 A. Well, personnel meetings with the state</p> <p>18 personnel division. They would have</p> <p>19 meetings.</p> <p>20 Q. You mean everyone in the central personnel</p> <p>21 office, or are you referring to another --</p> <p>22 A. No. All the personnel managers would come</p> <p>23 together and meet on a particular day.</p>	<p>1 A. From time to time Ms. Owens or Ms. Hubbard</p> <p>2 might also be asked to attend.</p> <p>3 Q. Were there times where they would attend</p> <p>4 those meetings and you weren't present?</p> <p>5 A. There may have been, yes.</p> <p>6 Q. And I'm assuming there were times when you</p> <p>7 attended them and they weren't present?</p> <p>8 A. Correct.</p> <p>9 Q. Would Mr. Ervin go with you to those</p> <p>10 meetings?</p> <p>11 A. No. Most of the time he was unable to go.</p> <p>12 He would either have another commitment and</p> <p>13 that's why we would attend.</p> <p>14 Q. So y'all would attend in his place, then?</p> <p>15 A. That's correct.</p> <p>16 Q. And he would assign one of you to attend?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Very good.</p> <p>19 MR. MOZINGO: Do you want to go</p> <p>20 ahead and take your break now</p> <p>21 and we'll grab some lunch and</p> <p>22 come back.</p> <p>23 (Whereupon lunch recess was taken.)</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 102	Page 104
<p>1 Q. (Continuing by Mr. Mazingo) Ms. Benson, we</p> <p>2 are back to pick up where we left off</p> <p>3 following our lunch break for your</p> <p>4 deposition, and you just told me there were</p> <p>5 a couple of things you wanted to clarify.</p> <p>6 Can you tell me what that is?</p> <p>7 A. The first one when you were asking me about</p> <p>8 filling the hypothetical position of</p> <p>9 facility director at Bryce Hospital and you</p> <p>10 asked me about who would be responsible for</p> <p>11 making the ultimate decision, the level of</p> <p>12 management, and I made reference to the</p> <p>13 associate commissioner. There is another</p> <p>14 level that I need to make you aware of and</p> <p>15 that's the director of facilities who I may</p> <p>16 or may not have contact with. It may not</p> <p>17 always be the associate commissioner. It</p> <p>18 could be the director of facilities for</p> <p>19 either MI or MR. So I just wanted to make</p> <p>20 that point clarified.</p> <p>21 Q. And who is the director of facilities</p> <p>22 currently?</p> <p>23 A. There's one for MI and that is --</p>	<p>1 offices located at the central office here</p> <p>2 in Montgomery?</p> <p>3 A. Yes.</p> <p>4 Q. And just for -- to be absolutely perfectly</p> <p>5 clear, the central office is located in the</p> <p>6 RSA Union building --</p> <p>7 A. That is correct.</p> <p>8 Q. -- on Union Street in Montgomery?</p> <p>9 A. Correct.</p> <p>10 Q. Third and fourth floor?</p> <p>11 A. The fourth and fifth floor.</p> <p>12 Q. Okay. Very good. Now, what is your second</p> <p>13 point?</p> <p>14 A. The second point that I wanted to make</p> <p>15 reference to, you had asked me to look at</p> <p>16 the job spec to see if there was anything</p> <p>17 different in the announcement in terms of</p> <p>18 what I was doing as a Personnel Specialist</p> <p>19 III as compared to what I'm doing now. And</p> <p>20 I made mention the fact that attending</p> <p>21 meetings was part of the same duty and</p> <p>22 responsibilities that I had. There was</p> <p>23 another one also, and that's recruitment,</p>
Page 103	Page 105
<p>1 Q. Mental illness?</p> <p>2 A. Mental illness. I'm sorry. And MR also.</p> <p>3 Mental retardation side also has one.</p> <p>4 Dr. Beverly Bell-Shambley is from the MI</p> <p>5 side and from the MR side is -- I'm trying</p> <p>6 to think of the name.</p> <p>7 Q. That's okay. It's just someone different</p> <p>8 than her?</p> <p>9 A. Yeah. But each division has their director</p> <p>10 of facilities. That's another level of</p> <p>11 management before the associate</p> <p>12 commissioner.</p> <p>13 MR. NIX: I don't know if that was</p> <p>14 a slip, but you said ultimate</p> <p>15 decision when you said that to</p> <p>16 him.</p> <p>17 THE WITNESS: Yes.</p> <p>18 A. The other point --</p> <p>19 Q. Let me ask you this before you go to the</p> <p>20 other point. The facilities -- I'm sorry.</p> <p>21 What are their titles again?</p> <p>22 A. Director of facilities.</p> <p>23 Q. The directors of facilities, are their</p>	<p>1 selection and placement that is still part</p> <p>2 of the function that I would do. But it's</p> <p>3 not to the degree that it was as a</p> <p>4 Personnel Specialist III.</p> <p>5 Q. The recruitment selection function is a</p> <p>6 duty that you were doing as a Personnel</p> <p>7 Specialist III and that you continue to</p> <p>8 do --</p> <p>9 A. That is correct.</p> <p>10 Q. -- as the Assistant Departmental Personnel</p> <p>11 Manager?</p> <p>12 A. Yes.</p> <p>13 Q. Any other points of clarification?</p> <p>14 A. No.</p> <p>15 Q. Plaintiffs' Exhibit 66 that we discussed</p> <p>16 this morning when -- again, the memo that</p> <p>17 was announcing that you would be</p> <p>18 supervising Ms. Owens and Ms. Hubbard.</p> <p>19 After that effective date of November 19th,</p> <p>20 2007, can you tell me -- list or give me</p> <p>21 the names of all the individuals that you</p> <p>22 were supervising? I know it's Joan Owens</p> <p>23 and Lynn Hubbard.</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 106	Page 108
<p>1 A. That's correct.</p> <p>2 Q. Who else were you supervising?</p> <p>3 A. Brooke Hogan.</p> <p>4 Q. Who took your old position but as --</p> <p>5 A. Personnel Specialist II.</p> <p>6 Q. Okay. Who else?</p> <p>7 A. Those three individuals.</p> <p>8 Q. Okay. On that date November 19th, who else</p> <p>9 was working in the department besides you,</p> <p>10 Mr. Ervin and Ms. Owens and Ms. Hubbard and</p> <p>11 Ms. Hogan?</p> <p>12 A. There is Anthony Elmore, who is an ASA II.</p> <p>13 Q. What is that?</p> <p>14 A. Administrative Support Assistant II.</p> <p>15 Q. And does he report directly to Mr. Ervin?</p> <p>16 A. Yes, he does.</p> <p>17 Q. And who else is there?</p> <p>18 A. There is Jody Smith, who now reports to</p> <p>19 Ms. Hubbard.</p> <p>20 Q. Was she reporting to Ms. Hubbard on</p> <p>21 November 19th, 2007?</p> <p>22 A. That's the time of the supervisory change.</p> <p>23 That's when that went into effect, yes.</p>	<p>1 Q. So there are -- Besides you and Mr. Ervin,</p> <p>2 there are a total of six employees in the</p> <p>3 department?</p> <p>4 A. That's correct.</p> <p>5 Q. And that's currently?</p> <p>6 A. Currently.</p> <p>7 Q. And that was also true on November 19th,</p> <p>8 2007?</p> <p>9 A. That is correct.</p> <p>10 Q. And those six employees, both currently and</p> <p>11 on November 19th, 2007, are Joan Owens,</p> <p>12 Lynn Hubbard, Brooke Hogan, Anthony Elmore,</p> <p>13 Jody Smith and Gina Watts?</p> <p>14 A. Correct.</p> <p>15 Q. And Anthony Elmore reports directly to</p> <p>16 Mr. Ervin?</p> <p>17 A. That is correct.</p> <p>18 Q. And you report directly to Mr. Ervin?</p> <p>19 A. That's correct.</p> <p>20 Q. And Jody Smith reports to Lynn Hubbard and</p> <p>21 Gina Watts reports to Joan Owens?</p> <p>22 A. That is correct.</p> <p>23 Q. Prior to November 17th, 2007, what was the</p>
Page 107	Page 109
<p>1 Q. So Jody Smith reports to Lynn Hubbard?</p> <p>2 A. That's correct.</p> <p>3 Q. And began reporting to Ms. Hubbard on</p> <p>4 November 19th, 2007?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And then who else is left?</p> <p>7 A. Gina Watts.</p> <p>8 Q. Gina Watts?</p> <p>9 A. And she's a Personnel Assistant II. And</p> <p>10 she reports to Ms. Owens.</p> <p>11 Q. And did her reporting to Ms. Owens become</p> <p>12 effective November 19th, 2007?</p> <p>13 A. That is correct.</p> <p>14 Q. Is there anyone else in the department --</p> <p>15 working in the department that we have not</p> <p>16 discussed?</p> <p>17 A. No. Not in personnel.</p> <p>18 Q. Okay. That's what we're talking about,</p> <p>19 central personnel.</p> <p>20 A. Correct.</p> <p>21 Q. And that's where you are the assistant</p> <p>22 departmental manager?</p> <p>23 A. That is correct.</p>	<p>1 organizational structure? And I said</p> <p>2 17th. I believe it's the 19th is the</p> <p>3 effective date.</p> <p>4 A. The 19th, yes.</p> <p>5 Q. Prior to the effective date on that</p> <p>6 memorandum, Plaintiffs' Exhibit 66, what</p> <p>7 was the organizational structure?</p> <p>8 A. Prior to that date, Ms. Owens and</p> <p>9 Ms. Hubbard both reported directly to</p> <p>10 Mr. Ervin.</p> <p>11 Q. Okay.</p> <p>12 A. Gina Watts reported to Mr. Ervin and Jody</p> <p>13 Smith reported to me.</p> <p>14 Q. And you reported to Mr. Ervin?</p> <p>15 A. That is correct. The position of Personnel</p> <p>16 Specialist II was vacant at the time.</p> <p>17 Q. Was Mr. Elmore working --</p> <p>18 A. Mr. Elmore reported to me.</p> <p>19 Q. So Smith reported to you and Elmore</p> <p>20 reported to you?</p> <p>21 A. That's correct.</p> <p>22 Q. And so let me summarize. Prior to November</p> <p>23 19th, 2007, Ms. Owens, Ms. Hubbard and</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 110

1 Ms. Watts reported to Henry Ervin as well  
2 as yourself?  
3 A. That's correct.  
4 Q. And Ms. Smith and Mr. Elmore reported to  
5 you?  
6 A. That's correct.  
7 Q. Now, when the lines of authority were  
8 revised as reflected in Plaintiffs' Exhibit  
9 66, why did Mr. Elmore go from reporting to  
10 you to Mr. Ervin?  
11 A. I don't know.  
12 Q. Was there a Becky Taylor working anywhere  
13 in the department prior to November 19th,  
14 2007?  
15 A. Yes. As a matter of fact there was. I had  
16 forgotten about Becky Taylor.  
17 Q. And what title did she have?  
18 A. She was a personnel specialist -- I'm  
19 trying to remember what level was it, I or  
20 II. She was a personnel specialist.  
21 Q. Who did she report to?  
22 A. She reported to me.  
23 Q. When did Ms. Taylor leave?

Page 111

1 A. I don't remember the date.  
2 Q. But is it true, then, that effective  
3 November 19th, 2007, Ms. Taylor was no  
4 longer working in central personnel?  
5 A. That is correct.  
6 Q. And so, again, you do not know why the  
7 lines of supervision were changed other  
8 than it's your understanding it was the  
9 recommendation of Mr. Davis, Lunsford and  
10 Ms. Marks?  
11 A. That is my understanding.  
12 Q. Now, take me back to when you were  
13 Personnel Specialist III before your  
14 promotion. Who was in the department and  
15 what were the lines of authority?  
16 MR. NIX: I'm sorry, Flynn. What  
17 year are you talking about?  
18 MR. MOZINGO: Back when she was  
19 Personnel Specialist III.  
20 Q. Right before your promotion.  
21 A. As I stated earlier, Ms. Owens and  
22 Ms. Hubbard reported directly to Mr. Ervin.  
23 Q. As well as you?

Page 112

1 A. As well as me. Now, you're talking about  
2 right before November the 19th; is that  
3 correct? Because I just answered that  
4 question earlier when you asked me that.  
5 Q. You did. You did ask before the November  
6 19th and now I'm going even further back  
7 and I'm saying --  
8 MR. NIX: He's asking about before  
9 your new job.  
10 Q. -- back when you were Personnel Specialist  
11 III before you received your promotion,  
12 what were the lines of authority? I know  
13 there was you, Ms. Hubbard and Ms. Benson  
14 all reporting to Mr. Ervin?  
15 A. That's correct.  
16 Q. Who else was there or were there?  
17 A. There was Rebecca Taylor.  
18 Q. And who did she report to?  
19 A. I'm trying to remember. I can't say for  
20 certain. I think she did report to me.  
21 It's been so long I'm trying to backtrack.  
22 Gina Watts was not -- I don't think she was  
23 in the office. I believe that position was

Page 113

1 vacant for a while. And then there was --  
2 To be perfectly honest with you, I can't  
3 really recall all of the --  
4 Q. But you believe, then, though, that  
5 Ms. Taylor reported to you?  
6 A. I believe she did.  
7 Q. Can you recall if anyone else reported to  
8 you?  
9 A. I can't recall.  
10 Q. So the only person you can recall reporting  
11 to you, then, back when you were a  
12 Personnel Specialist III was Becky Taylor?  
13 A. To the best of my recollection.  
14 Q. Okay. At any time that you served as a  
15 Personnel Specialist III or in the  
16 personnel specialist classification, was  
17 there anyone other than Becky Taylor who  
18 reported to you? Because now I'm going  
19 even further back.  
20 MR. NIX: You're saying at all  
21 times?  
22 Q. At all times that you were serving as a  
23 Personnel Specialist III or in the

Deposition of Marilyn B. Benson

June 24, 2008

Page 114

1 personnel specialist classification,  
 2 whether it be I or II, did you have anyone  
 3 other than Ms. Becky Taylor report to you?  
 4 A. I believe the ASA, the administrative  
 5 support person reported to me.  
 6 Q. And who would that have been?  
 7 A. I'm trying to remember. I can't remember  
 8 the name. But I think that position  
 9 reported to me.  
 10 Q. Okay. And were those the only two  
 11 individuals you can recall?  
 12 A. To the best of my recollection, yes.  
 13 Q. And when I say report to you, do you  
 14 understand that to mean the same thing as  
 15 supervise? You supervise that person?  
 16 A. Yes.  
 17 Q. So you would have supervised Becky Taylor  
 18 at some point while you were a personnel  
 19 specialist and then you may have supervised  
 20 the ASA whose name you cannot recall?  
 21 A. Yes.  
 22 Q. Other than those two individuals, have you  
 23 supervised anyone else while you've been

Page 115

1 employed with the Department of Mental  
 2 Health?  
 3 A. Other than the individuals that I just gave  
 4 you the names, those are the only ones.  
 5 Q. Those are the only two individuals you've  
 6 supervised while you've been employed with  
 7 the Department of Health prior to becoming  
 8 Assistant Departmental Personnel Manager?  
 9 A. To the best of my recollection.  
 10 MR. TARVER: Mental health.  
 11 MR. MOZINGO: What did I say?  
 12 MR. TARVER: Health.  
 13 Q. And I'm going to reask that question so it  
 14 will be clear for the record since I didn't  
 15 use the right word. Prior to becoming  
 16 Departmental Assistant Personnel Manager,  
 17 the only two individuals you can recall  
 18 supervising during your employment with the  
 19 Department of Mental Health were  
 20 Ms. Taylor, Ms. Becky Taylor, and possibly  
 21 an ASA whose name you cannot recall?  
 22 A. There was Bebe Bledsoe. Bebe Bledsoe. She  
 23 was in the position as a PA II. I think a

Page 116

1 PA II. I supervised her.  
 2 Q. What is a PA II?  
 3 A. Personnel Assistant II.  
 4 Q. And what does a PA II do?  
 5 A. Well, they may do various functions in the  
 6 area of personnel. Bebe's primary  
 7 responsibility was handling performance  
 8 appraisals.  
 9 Q. And when did you supervise Ms. Bledsoe?  
 10 A. I don't remember the dates.  
 11 Q. All right. Well, let me go back and ask  
 12 that question again since we have another  
 13 name. During your employment with the  
 14 Department of Mental Health, the only  
 15 individuals that you ever supervised prior  
 16 to becoming Departmental Assistant  
 17 Personnel Manager was Ms. Taylor,  
 18 Ms. Bledsoe and an ASA whose name you  
 19 cannot recall?  
 20 A. To the best of my recollection, yes.  
 21 Q. Thank you.  
 22 Ms. Benson, I noticed on your  
 23 application or your resume that has

Page 117

1 previously been marked as Plaintiffs'  
 2 Exhibit 67 I notice that you gave some --  
 3 you listed some professional activities.  
 4 And one of them is facilitator/planner for  
 5 governor's task force on domestic violence  
 6 and abuse.  
 7 A. That is correct.  
 8 Q. When did you serve on that task force?  
 9 A. I was appointed to that task force during  
 10 the time that Commissioner Kathy Sawyer was  
 11 commissioner. And it has carried over  
 12 since that time under the administration of  
 13 Governor Riley and also under the current  
 14 commissioner's administration, Commissioner  
 15 Houston.  
 16 Q. Are you still on the task force?  
 17 A. Yes, I am.  
 18 Q. And are you appointed by the governor or by  
 19 the commissioner?  
 20 A. By the governor.  
 21 Q. And your name is given to the governor,  
 22 then, by the commissioner?  
 23 A. Yes.



Deposition of Marilyn B. Benson

June 24, 2008

Page 118

1 Q. Is there anyone else with the Department of  
2 Mental Health who serves on that task  
3 force?  
4 A. Not that I know of.  
5 Q. You also have licensed and ordained Baptist  
6 minister?  
7 A. That is correct.  
8 Q. Are you still a licensed and ordained  
9 Baptist minister?  
10 A. I am.  
11 Q. When did you become -- Well, help me out  
12 before I ask that question. Is there a  
13 difference between licensed and ordained?  
14 A. You can be licensed but not necessarily  
15 ordained. Normally under the Baptist faith  
16 you become ordained when you have a church  
17 and become a pastor.  
18 Q. And how are you ordained?  
19 A. I was ordained under the Baptist faith here  
20 in Montgomery.  
21 Q. By other ministers?  
22 A. By my pastor.  
23 Q. By your pastor?

Page 119

1 A. That's correct.  
2 Q. And who licenses ministers?  
3 A. Who licensed me?  
4 Q. That's probably a better question. Who  
5 licenses you?  
6 A. My pastor.  
7 Q. Who ordained you?  
8 A. My pastor.  
9 Q. Right. His name, though.  
10 A. Thomas Jordan, Thomas E. Jordan.  
11 Q. And does he have a church here in  
12 Montgomery?  
13 A. He does.  
14 Q. What church does he --  
15 A. Lilly Baptist Church here in Montgomery.  
16 820 Hill Street.  
17 Q. Does he have any other churches where he  
18 has served as a minister or currently  
19 serves as a minister?  
20 A. He has been the pastor of Lilly Baptist for  
21 the past 39 years.  
22 Q. Is he the same individual that licensed  
23 you?

Page 120

1 A. Yes, he is.  
2 Q. Are there any other individuals by or  
3 through whom you've been licensed and  
4 ordained other than your pastor?  
5 A. No.  
6 Q. And when did you become licensed?  
7 A. In 1996.  
8 Q. When did you become ordained?  
9 A. 1997.  
10 Q. And you became ordained when you obtained  
11 your own church? Did I understand that  
12 correctly?  
13 A. That is correct.  
14 Q. And what church did you have back in 1997?  
15 A. Gap Fellowship Church in Alexander City.  
16 And I am still currently co-pastor of Gap  
17 Fellowship Church in Alex City.  
18 Q. Who is the other pastor?  
19 A. My husband.  
20 Q. And his name?  
21 A. Louis Benson.  
22 Q. Are there any other pastors besides you and  
23 your husband?

Page 121

1 A. We have another associate pastor.  
2 Evangelist Teresa Times is her name.  
3 Q. When you -- Well, prior to going to Gap  
4 Baptist Church --  
5 A. Gap Fellowship. It's a nondenominational  
6 church.  
7 Q. Prior to going to Gap Fellowship, did you  
8 attend Lilly Baptist?  
9 A. I did.  
10 Q. How long had you attended Lilly Baptist?  
11 A. Gosh, we lived here in Montgomery for  
12 20-something years. Just about during the  
13 whole time that we lived here in  
14 Montgomery.  
15 Q. So approximately 27 years?  
16 A. Approximately 20.  
17 Q. Have you attended any other churches in  
18 Montgomery besides Lilly Baptist?  
19 A. Yes, I have.  
20 Q. What other churches?  
21 A. People's Baptist Church, Carrie Street.  
22 Q. Any others?  
23 A. No.



Deposition of Marilyn B. Benson

June 24, 2008

Page 122

1 Q. Did you hold any offices or positions at  
2 Lilly Baptist?  
3 A. I was associate minister.  
4 Q. Did you cease the function of associate  
5 minister when you went to the Gap  
6 Fellowship?  
7 A. That is correct.  
8 Q. Did you hold any offices or positions with  
9 People's Baptist?  
10 A. I did.  
11 Q. What were you?  
12 A. Children's minister.  
13 Q. Have you attended any theology schools?  
14 A. I have.  
15 Q. What schools have you attended?  
16 A. Birmingham Theological Seminary.  
17 Q. Did you graduate?  
18 A. No.  
19 Q. When did you attend that school?  
20 A. 1996 through I think '98, to the best of my  
21 recollection.  
22 Q. Have you attended any other seminaries or  
23 theological school other than Birmingham

Page 123

1 Theological Seminary?  
2 A. No.  
3 Q. So that's the only one you've attended?  
4 A. Yes.  
5 Q. And while we're on the subject, then, are  
6 Birmingham Theological Seminary, AUM and  
7 Auburn University the only schools you've  
8 attended?  
9 A. I went to the junior college in Alex  
10 City -- that was for an associate's  
11 degree -- before I went to Auburn's main  
12 campus.  
13 Q. And what did you obtain an associate's  
14 degree in?  
15 A. Pre-med.  
16 Q. And that would have been, according to your  
17 resume, between 1976 and 1978?  
18 A. That's correct.  
19 Q. All right. Other than Birmingham  
20 Theological Seminary, the junior college in  
21 Alex City, Auburn University and AUM, have  
22 you attended any other schools or  
23 universities?

Page 124

1 A. No.  
2 Q. Why did you not graduate from the  
3 Birmingham Theological Seminary?  
4 A. Well, basically because of time, because of  
5 my prior commitments, my job, trying to do  
6 two different things. Just never had a  
7 chance to go back and finish.  
8 Q. So you voluntarily ceased attending the  
9 seminary?  
10 A. Yes. Yes.  
11 Q. And you were a minister at Gap Fellowship  
12 for how long? Well, no. You still are.  
13 You're still there.  
14 A. I still am.  
15 Q. And that church is in Alexander City?  
16 A. That is correct.  
17 Q. And you said it's nondenominational?  
18 A. It's nondenominational.  
19 Q. Out of curiosity, how does that work since  
20 you're a Baptist minister?  
21 A. Anybody who is of the Christian faith is  
22 more than welcome to come attend and be a  
23 member of the church.

Page 125

1 Q. Now, as a Baptist minister, are you  
2 affiliated with the Southern Baptist  
3 Association or some other --  
4 A. No.  
5 Q. Are you affiliated, though, with some  
6 Baptist organization?  
7 A. No. We associate. But in terms of being  
8 an actual member, no.  
9 Q. Who are you associated with, then?  
10 A. We're an independent church. We also  
11 associate with the Full Gospel Fellowship  
12 based out of New Orleans.  
13 Q. Is that a church in New Orleans?  
14 A. It's a fellowship.  
15 Q. And are you associated with the fellowship  
16 or is your church associated?  
17 A. Our church.  
18 Q. Are you a member of any clubs or  
19 organizations other than what we've  
20 discussed today? And I think I've covered  
21 your resume. I see you flipping at that to  
22 refresh your memory. But I think we've  
23 covered that, so I'm going beyond your

Deposition of Marilyn B. Benson

June 24, 2008

Page 126

1 resume now.  
 2 A. No.  
 3 Q. You don't belong to any sororities or other  
 4 clubs?  
 5 A. No, I do not. No.  
 6 Q. Do you belong to any professional  
 7 associations?  
 8 A. No.  
 9 Q. So would your activities as a minister be  
 10 your sole out of -- away-from-work  
 11 endeavors?  
 12 A. Yes.  
 13 Q. Let me show you what was previously marked  
 14 as Plaintiffs' Exhibit 49. Can you  
 15 identify that for the record?  
 16 A. It's a memo to Ms. Jackie Graham as the  
 17 deputy director of state personnel  
 18 establishing two exempt positions, one  
 19 being the health facilities manager and the  
 20 other one being the Departmental Assistant  
 21 Personnel Manager.  
 22 Q. Now, you explained to me earlier today what  
 23 the H in the job code meant. And I see

Page 127

1 that there's an A in the job code for  
 2 health facilities manager. Do you have any  
 3 idea what that A could possibly mean?  
 4 A. Most of those are administrator type  
 5 positions, either managers or higher level  
 6 administrator position.  
 7 Q. And the range out next to -- out beside,  
 8 that's the salary range?  
 9 A. That's the salary range.  
 10 Q. What is a PCQ number?  
 11 A. A PCQ number identifies the particular  
 12 position as it's created. Every position  
 13 has a PCQ number.  
 14 Q. Do you know who typed this document?  
 15 A. I typed this document.  
 16 Q. It says MBB --  
 17 A. That is correct.  
 18 Q. -- down there. Are those your initials?  
 19 A. Those are my initials.  
 20 Q. Did you type this document at the direction  
 21 of Mr. Ervin?  
 22 A. I did.  
 23 Q. How did you obtain the job code, the pay

Page 128

1 range and the PCQ numbers for the Health  
 2 Facilities Manager and Departmental  
 3 Assistant Personnel Manager?  
 4 A. They were obtained by looking at the  
 5 current system to see what the existing  
 6 classifications were, where they could be  
 7 fitted in. We also checked to see whether  
 8 or not the job code already exists before  
 9 one is set up. PCQ numbers are usually  
 10 given to us by one of the ladies within the  
 11 office at that time. I think it was Becky  
 12 Taylor that was responsible for handling  
 13 PCQ numbers.  
 14 Q. Okay. So you would not have obtained the  
 15 PCQ number. Becky Taylor would have?  
 16 A. Yes.  
 17 Q. I'm not sure I understand your answer and  
 18 maybe it's because my question was a poor  
 19 question. Who obtained the PCQ number?  
 20 Let me ask it that way.  
 21 A. Rebecca Taylor.  
 22 Q. And did you ask Rebecca Taylor to obtain  
 23 that number or did someone else?

Page 129

1 A. I can't remember whether I asked her or  
 2 whether Mr. Ervin asked. But the number  
 3 was provided for me in order for me to put  
 4 it on the memo to get it across the street  
 5 to state personnel.  
 6 Q. Who obtained the range, salary range for  
 7 these two positions?  
 8 A. Mr. Ervin.  
 9 Q. Did he obtain that salary range with any  
 10 assistance from you?  
 11 A. Yes, he did.  
 12 Q. What assistance did you give?  
 13 A. We researched previous positions in terms  
 14 of the actual salary range, where they were  
 15 before. The health facilities manager, of  
 16 course, was a new position, and I believe  
 17 that salary range was already set up.  
 18 Q. So the salary range for the health facility  
 19 manager already existed; is that correct?  
 20 A. Well, it was established, but it was given  
 21 to me to develop this particular memo.  
 22 Q. So in other words, someone gave you the 80  
 23 salary range for that position?

Deposition of Marilyn B. Benson

June 24, 2008

Page 130

1 A. Yes.  
 2 Q. And you plugged it in the memorandum?  
 3 A. That's correct.  
 4 Q. Now, but you did help research the salary  
 5 range for the Departmental Assistant  
 6 Personnel Manager?  
 7 A. I did.  
 8 Q. And how did you do that?  
 9 A. That was researched by looking at various  
 10 states; Florida, Tennessee, Georgia. Also  
 11 looking at information from state personnel  
 12 comparable positions and looking at the  
 13 actual duties and salaries.  
 14 Q. Did you do that research on your own?  
 15 A. I did.  
 16 Q. Did anyone assist you?  
 17 A. Mr. Ervin.  
 18 Q. Is he the one that directed you to do that  
 19 research?  
 20 A. Yes.  
 21 Q. When did you first learn about the possible  
 22 creation of the position of Departmental  
 23 Assistant Personnel Manager?

Page 131

1 A. I don't remember the exact date. But I was  
 2 given an assignment to do research in terms  
 3 of actually developing a job spec  
 4 researching information from the Internet  
 5 from various states.  
 6 Q. And who gave you that responsibility?  
 7 A. Mr. Ervin.  
 8 Q. And can you recall what his directions  
 9 were?  
 10 A. He just asked me to try to get some  
 11 information from surrounding states  
 12 regarding comparable positions, salary  
 13 information as well, job duties and  
 14 responsibilities, along with minimum  
 15 qualifications for the position.  
 16 Q. Now, given the date of this memo is  
 17 February 3rd, 2005, then I'm assuming he  
 18 would have given you that assignment prior  
 19 to the date of this memo?  
 20 A. Yes.  
 21 Q. Do you know how long before this memo?  
 22 A. No, I do not.  
 23 Q. Is the February 3rd date on this memo, to

Page 132

1 the best of your knowledge, is that an  
 2 accurate date that this memo was prepared?  
 3 A. To the best of my knowledge, yes.  
 4 Q. As you can see, there's a stamped date on  
 5 the side. It says State Personnel  
 6 Department classification and pay. And it  
 7 also says February 3rd, 2005.  
 8 A. That's correct.  
 9 Q. So do you believe, then, that this memo  
 10 would have been sent to state personnel on  
 11 February 3rd, 2005?  
 12 A. I'm assuming, if that's what's stamped on  
 13 there.  
 14 Q. When Mr. Ervin gave you this assignment,  
 15 did he explain anything to you about why  
 16 this job was being created and what it was  
 17 supposed to do?  
 18 A. From what I understand, it was part of  
 19 the --  
 20 MR. NIX: Listen to his question.  
 21 And you may be answering it  
 22 completely correctly. But he  
 23 was saying -- wasn't your

Page 133

1 question when Mr. Ervin gave  
 2 you the assignment to do the  
 3 research did he tell you -- I  
 4 think that was the question.  
 5 And you may have been  
 6 answering it.  
 7 A. Do you want to ask that to me again and  
 8 make sure I'm understanding what you're  
 9 saying?  
 10 Q. Well, when he gave you this assignment, did  
 11 he tell you why this position was being  
 12 created?  
 13 A. From my understanding it was part of the  
 14 recommendation that the commissioner had  
 15 given the associate commissioner,  
 16 Mr. Dillihay, to look at work force  
 17 succession planning. They not only were  
 18 looking at the division of HR. They were  
 19 also looking at IT division and various  
 20 other divisions under the associate  
 21 commissioner of administration's  
 22 supervision to create a position so that  
 23 when the director position was vacated

Deposition of Marilyn B. Benson

June 24, 2008

Page 134

1 there would be someone in place.  
 2 Considering there's 30 percent of the work  
 3 force that was eligible to retire, they  
 4 wanted to have a plan in place to make sure  
 5 that the duties and responsibilities were  
 6 still carried on.  
 7 Q. Well, was there any understanding on your  
 8 part that this position was being created  
 9 to establish a career path for someone to  
 10 move up to the personnel manager's  
 11 position?  
 12 A. That was part of it I do believe.  
 13 Q. And you would have obtained that  
 14 understanding from Mr. Ervin?  
 15 A. That was discussed, yes.  
 16 Q. What else was discussed?  
 17 A. That's the only thing that I can recall.  
 18 Q. Well, did Mr. Ervin discuss with you what  
 19 this -- what the new job functions for this  
 20 position would be?  
 21 A. He did not discuss the job functions. He  
 22 asked me to research information in order  
 23 to create a job spec.

Page 135

1 Q. Well, to create a job spec and to do your  
 2 research do you need to know what the job  
 3 duties are going to be?  
 4 A. He had mentioned something about part of  
 5 the duties and responsibilities, but the  
 6 information that I --  
 7 MR. NIX: Excuse me. Did you say  
 8 what her responsibilities?  
 9 MR. MOZINGO: No, no, no. She was  
 10 answering the question. Let  
 11 her finish.  
 12 MR. NIX: Well, I want to make  
 13 sure I understand what the  
 14 question was. Did you ask her  
 15 when he gave her the  
 16 responsibility to research the  
 17 spec what her job function --  
 18 MR. MOZINGO: No. That is not  
 19 what I asked. That is not  
 20 what I asked.  
 21 MR. NIX: I just wanted to make  
 22 sure. You're just asking in a  
 23 general sense?

Page 136

1 MR. MOZINGO: Will you please read  
 2 the question back to her.  
 3 (Requested portion of the record  
 4 was read by the Reporter.)  
 5 A. He asked me to do research concerning the  
 6 Assistant Departmental Personnel Manager.  
 7 In order to do that I had to compile  
 8 information from various sources from  
 9 various states' web sites, also looking at  
 10 information from state personnel as well.  
 11 Q. Well, did you -- In compiling that  
 12 information, did you seek to determine  
 13 whether such a position existed with other  
 14 state personnel offices?  
 15 A. Yes, I did. Not only that, this position  
 16 existed at the Department of Mental Health  
 17 as well, and part of that information was  
 18 also used in developing this job spec.  
 19 Q. So this position had previously existed --  
 20 A. That is correct.  
 21 Q. -- at the Department of Mental Health?  
 22 A. Correct.  
 23 Q. And I believe Mr. Ervin testified that he

Page 137

1 had held that position too?  
 2 A. That is correct.  
 3 Q. When Mr. Ervin was giving you this  
 4 assignment, did he share with you any  
 5 duties or responsibilities that he foresaw  
 6 this position having?  
 7 A. I don't recall.  
 8 Q. Now, you testified about work force  
 9 planning or succession planning being  
 10 considered for this Department of Human  
 11 Resources and IT. What other departments  
 12 were being evaluated for work force  
 13 succession planning?  
 14 A. The other divisions that were underneath  
 15 the supervision of the associate  
 16 commissioner for administration. Staff  
 17 development was also one of the areas under  
 18 his supervision.  
 19 Q. Any other divisions or sections?  
 20 A. I believe OBRA is also a division  
 21 underneath his supervision.  
 22 Q. What is OBRA?  
 23 A. Omnibus Budget Reconciliation Act. It is



Deposition of Marilyn B. Benson

June 24, 2008

Page 138	Page 140
<p>1 one of the divisions that is responsible</p> <p>2 for nursing home and Medicaid and Medicare</p> <p>3 type functions.</p> <p>4 Q. Any other divisions?</p> <p>5 A. I can't recall every single division that's</p> <p>6 under his supervision, but those are just</p> <p>7 some of the ones that I remember.</p> <p>8 Q. Who was the director of IT around February</p> <p>9 3rd, 2005?</p> <p>10 A. Dan Evans.</p> <p>11 Q. What was his title, if you can recall?</p> <p>12 A. Director of IT. He is in a merit system</p> <p>13 position. I can't remember the exact title</p> <p>14 of his merit system class.</p> <p>15 Q. Are all of the employees in the IT section</p> <p>16 merit employees?</p> <p>17 A. They're merit and exempt.</p> <p>18 Q. In February 2005 was there an assistant</p> <p>19 director's position in the IT section?</p> <p>20 A. I don't think that there was, but there was</p> <p>21 conversations, I believe, in terms of</p> <p>22 creating. That was part of the</p> <p>23 recommendation.</p>	<p>1 A. Yes.</p> <p>2 Q. And who holds that position?</p> <p>3 A. Connie Blair.</p> <p>4 Q. Now, when the position for -- when the</p> <p>5 assistant director in IT and the assistant</p> <p>6 director in staff development positions</p> <p>7 were established, were they established</p> <p>8 through the creation of new positions or</p> <p>9 was someone given that title?</p> <p>10 A. To the best of my recollection there were</p> <p>11 new positions.</p> <p>12 Q. Because what I learned from Mr. Ervin is</p> <p>13 that he has the title of personnel manager</p> <p>14 but his -- he has the working title of</p> <p>15 personnel manager, but his actual title is,</p> <p>16 I think, Personnel Manager IV?</p> <p>17 A. Right. And the classification may be</p> <p>18 different than the actual working title of</p> <p>19 an individual.</p> <p>20 Q. But it's your testimony for the IT sections</p> <p>21 and staff development sections that new</p> <p>22 positions were actually created?</p> <p>23 A. To the best of my recollection, yes.</p>
Page 139	Page 141
<p>1 Q. And has an assistant IT director's position</p> <p>2 been established since February 3rd, 2005?</p> <p>3 A. I believe it has.</p> <p>4 Q. And when was it established?</p> <p>5 A. I don't remember the exact date.</p> <p>6 Q. Do you know who holds that position today?</p> <p>7 A. I don't believe that position has been</p> <p>8 filled.</p> <p>9 Q. So it's still unfilled?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Now, staff development, is that a separate</p> <p>12 section?</p> <p>13 A. That is a separate section.</p> <p>14 Q. And who was the director of staff</p> <p>15 development in February 3rd -- on or about</p> <p>16 February 3rd, 2005?</p> <p>17 A. Commie Carter.</p> <p>18 Q. And on or about February 3rd, 2005 was</p> <p>19 there an assistant director of staff</p> <p>20 development?</p> <p>21 A. I don't know if it was at that time, but</p> <p>22 there is now.</p> <p>23 Q. So that position has been created?</p>	<p>1 Q. How about OBRA, was there an assistant</p> <p>2 director of OBRA on or about February 3rd,</p> <p>3 2005?</p> <p>4 A. I can't recall.</p> <p>5 Q. Well, has such a position been created</p> <p>6 since February 3rd, 2005?</p> <p>7 A. I can't recall.</p> <p>8 Q. Do you know if an assistant director's</p> <p>9 position was created for any other section</p> <p>10 in the Department of Mental Health other</p> <p>11 than human resources, IT and staff</p> <p>12 development?</p> <p>13 A. I can't recall.</p> <p>14 Q. Who obtained the job code number for the</p> <p>15 Departmental Assistant Personnel Manager</p> <p>16 position as reflected on Plaintiffs'</p> <p>17 Exhibit 49?</p> <p>18 A. I think I had answered that question</p> <p>19 earlier when you asked me. That was done</p> <p>20 in conjunction with Mr. Ervin.</p> <p>21 Q. Did you assist Mr. Ervin in obtaining that</p> <p>22 job code?</p> <p>23 A. Yes, I did.</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 142

1 Q. Let me show you what's previously been  
2 marked Plaintiffs' Exhibit 50. Can you  
3 identify that document for the record?  
4 A. It's a memorandum to Commissioner  
5 Houston -- he was acting commissioner at  
6 that time -- from Henry Ervin regarding the  
7 Departmental Assistant Personnel Manager  
8 position.  
9 Q. When did Mr. Houston become acting  
10 director?  
11 A. I don't remember the exact date.  
12 Q. Was he the acting director in February  
13 2005?  
14 A. I don't remember.  
15 Q. Do you know who typed Plaintiffs' Exhibit  
16 50?  
17 A. I typed it.  
18 Q. And did you type it under the direction of  
19 Mr. Ervin?  
20 A. Yes, I did.  
21 Q. Did Mr. Ervin actually dictate this letter?  
22 A. Yes, he did.  
23 Q. Is there anything in this letter that you

Page 143

1 composed?  
2 A. No.  
3 Q. Does Mr. Ervin have access to a dictation  
4 machine?  
5 A. I'm not sure whether he does or not.  
6 Q. How did he dictate this letter, then?  
7 A. It was written -- handwritten.  
8 Q. He wrote out the letter --  
9 A. Yes, he did.  
10 Q. -- by hand and then gave it to you to type  
11 it?  
12 A. Yes.  
13 Q. And he composed the substance of this  
14 letter?  
15 A. That is correct.  
16 Q. And there's nothing in the substance of the  
17 letter that you composed?  
18 A. No.  
19 Q. Did he consult you on this letter prior to  
20 writing it out?  
21 A. No, he did not.  
22 Q. Did he consult you while he was writing the  
23 letter out?

Page 144

1 A. No, he did not.  
2 Q. Did you have any discussions with Mr. Ervin  
3 about any of the matters set forth in the  
4 letter prior to you typing it on June 14th,  
5 2005?  
6 A. No.  
7 Q. He explains his reasons for requesting the  
8 creation of the job in the letter that's  
9 been marked Plaintiffs' Exhibit 50. Is  
10 that your understanding?  
11 A. That's my understanding.  
12 Q. Did he discuss with you -- ever discuss  
13 with you at any time before June 14th, 2005  
14 why he wanted the job to be created?  
15 A. No, he did not.  
16 Q. Let me show you what's been marked  
17 Plaintiffs' Exhibit 52. I should say  
18 previously marked. That was marked for  
19 another deposition. Can you identify that  
20 for the record?  
21 A. That is announcement for the Departmental  
22 Assistant Personnel Manager position.  
23 Q. And this announcement has a reply date of

Page 145

1 June 24th, 2005; correct?  
2 A. That is correct.  
3 Q. Who typed Plaintiff's Exhibit 52?  
4 A. I typed the announcement.  
5 Q. Under Mr. Ervin's direction?  
6 A. That is correct.  
7 Q. Did he dictate the contents of the  
8 announcement?  
9 A. No, he did not.  
10 Q. How did you arrive at the contents that are  
11 contained in this announcement?  
12 A. I was asked to do a draft of an  
13 announcement and that was done from the  
14 actual job specification. It was done at  
15 the request of Mr. Ervin.  
16 Q. And would Plaintiffs' Exhibit 52 be one of  
17 the drafts that you did?  
18 A. I think it's correct to say that, yes.  
19 Q. How many drafts did you do?  
20 A. I don't remember the exact number. I know  
21 there was two drafts that were done.  
22 (Plaintiffs' Exhibit 68 was marked  
23 for identification.)

Deposition of Marilyn B. Benson

June 24, 2008

Page 146

1 Q. Let me show you what I am marking  
 2 Plaintiffs' Exhibit 68. I'm going to  
 3 represent to you, Ms. Benson, Plaintiffs'  
 4 Exhibit 68 is a document that was presented  
 5 to me by your attorney today after we  
 6 returned from lunch. For the record it's  
 7 been Bates stamped ADMH 08-00015. Did you  
 8 type Plaintiffs' Exhibit 68?  
 9 A. I did.  
 10 Q. Is that another draft?  
 11 A. Yes, it is.  
 12 Q. So you know that you at least had two  
 13 drafts?  
 14 A. Yes.  
 15 Q. Can you recall if there were any more than  
 16 two?  
 17 A. I can't remember.  
 18 Q. Which draft was prepared first?  
 19 A. The one with the substitution clause.  
 20 Q. And what did you do with Plaintiffs'  
 21 Exhibit 68 after you drafted it?  
 22 A. I gave it to Mr. Ervin.  
 23 Q. Do you know what he did with it after that?

Page 147

1 A. I'm not exactly sure. I assume that he  
 2 shared it with his supervisor.  
 3 Q. And did he ever return Plaintiffs' Exhibit  
 4 68 to you?  
 5 A. There were some changes made. The normal  
 6 course of action would have been to follow  
 7 the immediate supervisor, the associate  
 8 commissioner. I think the commissioner  
 9 reviewed it. If I remember correctly, I  
 10 think Ms. June Lynn gave input. When the  
 11 version was given back to me, the  
 12 substitution clause was removed.  
 13 Q. Okay. The version that was given back to  
 14 you, did it have comments or writings or  
 15 strike-throughs on it?  
 16 A. Yes, it did.  
 17 Q. Do you know what happened to that version?  
 18 A. I don't know. I was told to remove the  
 19 substitution clause and to include  
 20 preference of master's degree in any of the  
 21 above-specified fields of study as well as  
 22 to add the work experience in the public  
 23 sector.

Page 148

1 Q. Who told you to remove the substitution  
 2 clause?  
 3 A. I was told by Mr. Ervin.  
 4 Q. And who told you what to add?  
 5 A. He told me the modifications to make to the  
 6 existing announcement and that's what I  
 7 did.  
 8 Q. And do you know whose idea it was to remove  
 9 the substitution clause?  
 10 A. Well, as I stated earlier, it was reviewed  
 11 by several people; the associate  
 12 commissioner of administration, Ms. June  
 13 Lynn, the commissioner himself.  
 14 Q. Now, you told me Plaintiffs' Exhibit 68  
 15 came first. Can you tell me when that  
 16 document was actually prepared or typed by  
 17 you?  
 18 A. I can't remember the exact date.  
 19 Q. Would it have been -- Would you have  
 20 prepared that document in conjunction with  
 21 any of the other exhibits we've looked at  
 22 today?  
 23 A. Other exhibits such as?

Page 149

1 Q. Such as, well, you've got Plaintiffs'  
 2 Exhibit 49 there in front of you.  
 3 A. Yes. It's standard procedure to include a  
 4 job spec whenever this particular request  
 5 goes to state personnel for their approval.  
 6 Q. So would the job spec have been prepared  
 7 prior to Plaintiffs' Exhibit 49?  
 8 A. Most likely.  
 9 Q. And would the job spec have been submitted  
 10 along with Plaintiffs' Exhibit 49?  
 11 A. Most likely it was.  
 12 Q. And the job spec you previously identified  
 13 for us is Plaintiffs' Exhibit 46; is that  
 14 correct?  
 15 A. That is correct.  
 16 Q. So when Plaintiffs' Exhibit 49 was sent to  
 17 state personnel, attached to it would have  
 18 been a copy of Plaintiffs' Exhibit 46?  
 19 A. To the best of my recollection, yes.  
 20 Q. How many drafts were made of Plaintiffs'  
 21 Exhibit 46?  
 22 A. I don't recall.  
 23 Q. Was there more than one draft?

Deposition of Marilyn B. Benson

June 24, 2008

Page 150

1 A. It's possible that there was more than one,  
2 but I don't recall the exact number.  
3 Q. Now, the announcement you told me earlier  
4 or the drafts of the announcement such  
5 as -- the drafts of the announcement such  
6 as Plaintiffs' Exhibit 52, you told me  
7 earlier that would have been prepared using  
8 the job specifications; is that correct?  
9 A. Yes.  
10 Q. How was it that for Plaintiffs' Exhibit  
11 68 -- how was it that that had a  
12 substitution clause in there whereas the  
13 job spec, Plaintiffs' Exhibit 46, does not?  
14 A. I don't know. The first draft that I  
15 prepared had the substitution clause.  
16 Q. Did the first draft of the job specs for  
17 the position of Departmental Assistant  
18 Personnel Manager contain a substitution  
19 clause?  
20 A. I can't recall whether it did or not.  
21 Q. But you would have prepared the first  
22 draft; correct?  
23 A. Yes.

Page 151

1 Q. And all subsequent drafts, if any?  
2 A. That is correct.  
3 Q. Was Plaintiffs' Exhibit 68 prepared around  
4 the same time that the job specs were  
5 prepared or the memorandum to state  
6 personnel such as Plaintiffs' Exhibit 49?  
7 A. I can't recall the exact sequence and the  
8 date in terms of which one was prepared  
9 first.  
10 Q. Would the announcement or would a draft of  
11 the announcement, would it have been sent  
12 to state personnel along with Plaintiffs'  
13 Exhibit 49?  
14 A. Not the announcement, the job  
15 specification. State personnel does not  
16 receive our announcements.  
17 Q. Other than the job specification, would  
18 anything else have been included with  
19 Plaintiffs' Exhibit 49 when it was sent to  
20 state personnel?  
21 A. Not that I recall.  
22 Q. Let me show you what's previously been  
23 marked as Plaintiffs' Exhibit 47. Who

Page 152

1 prepared that document?  
2 A. I did.  
3 Q. You would have typed it up?  
4 A. Yes.  
5 Q. Would that, again, have been pursuant to  
6 Mr. Ervin's direction?  
7 A. That is correct.  
8 Q. When you were working on these drafts,  
9 whether it be for the announcement or the  
10 job spec or anything related to the new job  
11 of Departmental Assistant Personnel  
12 Manager, did you talk with anyone other  
13 than Mr. Ervin about the work that you were  
14 doing?  
15 A. What do you mean the work that I was  
16 doing? Compiling the job spec?  
17 Q. Yeah. The research -- When you were doing  
18 your research and you were typing up the  
19 announcements and the job specs, you told  
20 me you did a lot of that at the direction  
21 of Mr. Ervin. Did you receive directions  
22 from anyone else besides Mr. Ervin?  
23 A. I talked with Associate Commissioner

Page 153

1 Dillihay in his capacity as associate  
2 commissioner and also with Ms. June Lynn as  
3 her capacity as attorney -- advisory  
4 attorney.  
5 Q. Well, was there -- Was Mr. Courtney Tarver  
6 working with the department then?  
7 A. Yes.  
8 Q. And he is --  
9 A. Also Mr. Tarver.  
10 Q. Did you have any conversations with  
11 Mr. Tarver?  
12 A. Not directly.  
13 Q. Tell me about your conversations with  
14 Mr. Dillihay. How many did you have?  
15 A. I can't remember the exact number.  
16 Q. Do you remember the substance of any of  
17 those conversations?  
18 A. No, I do not.  
19 Q. Do you remember generally what they would  
20 have been about?  
21 A. He may have asked whether or not the  
22 research was completed. Mr. Dillihay was a  
23 very hands-on individual. He would a lot

Deposition of Marilyn B. Benson

June 24, 2008

Page 154

1 of times want to --  
 2 MR. NIX: If you know, now, tell  
 3 him. But if you don't recall,  
 4 you need to say that, too,  
 5 because he's going to assume  
 6 when you answer it that you  
 7 know; okay? I don't think he  
 8 wants you to do anything other  
 9 than tell what you remember.  
 10 A. I don't remember any specific conversation.  
 11 Q. You told me that.  
 12 A. I do know that he would ask periodically  
 13 because he was a very hands-on person, you  
 14 know, how are you -- you know, what's the  
 15 status of this, what's the status of that.  
 16 Q. Did Mr. Dillihay ever direct you to include  
 17 or exclude anything from the job specs?  
 18 A. I don't know where the decision was made.  
 19 I know that it was reviewed by several  
 20 people. The job spec was reviewed by  
 21 Mr. Ervin. It was reviewed by Associate  
 22 Commissioner Dillihay, also by June Lynn,  
 23 Mr. Tarver and the commissioner.

Page 155

1 Q. And you told me about your directions from  
 2 Mr. Ervin and you told me that Mr. Dillihay  
 3 would sometimes ask you how things were  
 4 coming along. Would he ask you anything  
 5 else?  
 6 A. I can't recall anything else.  
 7 Q. Did he give you -- Do you recall any  
 8 specific instructions or directions that he  
 9 may have ever given you?  
 10 A. From Mr. Dillihay?  
 11 Q. From Mr. Dillihay regarding this  
 12 assignment.  
 13 A. No.  
 14 Q. Did you ever have any conversations with  
 15 Commissioner Houston regarding this  
 16 assignment?  
 17 A. No, I did not.  
 18 Q. Did you ever receive any notes, memorandums  
 19 or writings from Mr. Houston regarding this  
 20 assignment?  
 21 A. I did not.  
 22 Q. Did you receive any notes or memorandums or  
 23 writings from Mr. Dillihay regarding this

Page 156

1 assignment?  
 2 A. No, I did not.  
 3 Q. Did you have any discussions -- and, again,  
 4 I'm not going to ask you -- I'm not asking  
 5 about the content of any discussions. But  
 6 did you have any discussions with  
 7 Mr. Tarver regarding this assignment?  
 8 A. No, I did not.  
 9 Q. Did you have any discussions with Ms. June  
 10 Lynn regarding this assignment?  
 11 A. Well, in her capacity as the advisory  
 12 attorney, yes.  
 13 Q. And what instructions were you given from  
 14 her?  
 15 A. In terms of actually reviewing the job  
 16 specifications.  
 17 Q. Was there any content, for example, to the  
 18 job specs that she asked you to include or  
 19 exclude?  
 20 A. No, not that I can recall.  
 21 Q. Did she give you any memorandums, writings  
 22 or notes regarding this assignment that you  
 23 were working on?

Page 157

1 A. Not that I can recall.  
 2 Q. When you would prepare a draft of the job  
 3 specs or the announcements, would you send  
 4 the draft directly to Mr. Ervin?  
 5 A. Yes, I would.  
 6 Q. Would you send copies of the draft to  
 7 anyone else?  
 8 A. It's possible. I can't remember. Most of  
 9 the time -- I do remember sending it  
 10 directly to Mr. Ervin.  
 11 Q. Now, you told me Ms. Becky Taylor helped  
 12 you get a PCQ number?  
 13 A. That's correct.  
 14 Q. Did Ms. Becky Taylor help you with anything  
 15 else or any of your other work on this  
 16 assignment?  
 17 A. Not that I can recall.  
 18 Q. Besides Ms. Becky Taylor did anyone else  
 19 help you with this assignment?  
 20 A. Not that I can recall.  
 21 Q. Besides Ms. Taylor did you ask anyone else  
 22 for help on this assignment?  
 23 A. No.



Deposition of Marilyn B. Benson

June 24, 2008

Page 158	Page 160
<p>1 Q. Other than you are you aware if Mr. Ervin 2 asked anyone else for help on this 3 assignment? 4 A. I don't know whether he did or not. 5 Q. When you were working on this assignment, 6 did you have any interest in applying for 7 the job that was being created? 8 A. No, I did not. 9 Q. You had no interest? 10 A. No. 11 Q. Why? 12 A. I had no interest only up until I received 13 a lot of encouragement from people within 14 the department encouraging me to apply for 15 it. And after thinking about it, I decided 16 to go ahead and submit my application. 17 Q. Who encouraged you to apply? 18 A. You want specific names of individuals? 19 Q. Sure. 20 A. Tish Hendricks, who is at Greil Hospital. 21 Elmira Jones, she's the executive director 22 of the DD council. Betty Florence, who is 23 now retired. She's an accountant with the</p>	<p>1 people encouraging me within the department 2 to apply for it. 3 Q. Do you think you needed that encouragement 4 to apply? 5 A. I felt like I could probably do the job, 6 and that was another reason why I applied, 7 submitted my application. 8 Q. And the job was a promotion? 9 A. Yes, it was. 10 Q. And the job was a five-step pay raise? 11 A. Yes. Five-range pay raise, not step. 12 Q. I'm sorry. There are steps in a range? 13 A. That is correct. There are 18 steps in 14 each range. 15 Q. But the new job of Assistant Departmental 16 Personnel Manager was five ranges above 17 your current position? 18 A. That is correct. 19 Q. And would the fact that it was a promotion 20 and five ranges higher, would that have 21 been reason alone enough for you to apply? 22 A. Well, I wouldn't say that those were the 23 only reasons. I had to give it some</p>
Page 159	Page 161
<p>1 department. There were several other 2 people in the department that encouraged me 3 to apply. 4 Q. Did Mr. Ervin encourage you to apply? 5 A. I discussed it with Mr. Ervin and he also 6 encouraged me to apply. 7 Q. And when did you discuss it with him? 8 A. I don't remember the exact date. 9 Q. Would it have been prior to the 10 announcement that's reflected -- 11 A. No. 12 Q. -- in Plaintiffs' Exhibit 47? 13 A. No, it was not prior to the announcement. 14 Q. So he encouraged you to apply after the 15 announcement of the job opening went out? 16 A. Yes. 17 Q. Did you ever have any discussion prior to 18 the announcement with Mr. Ervin as to 19 whether you should apply for the job? 20 A. No, I did not. 21 Q. Is it your testimony that you applied 22 because you received encouragement? 23 A. Well, that was one of the main reasons why,</p>	<p>1 serious consideration. Those were 2 contributing factors in terms of me 3 submitting my application. 4 Q. Were there any considerations that you had 5 for not applying? 6 A. I did think about it, yes, in terms of how 7 some of the people within the office would 8 react if I was selected for the position. 9 I did think about that, yes. 10 Q. Are you referring to Ms. Owens and 11 Ms. Hubbard? 12 A. I'm referring to Ms. Owens and Ms. Hubbard. 13 Q. How about anyone else, did you have any 14 considerations of how they might react? 15 A. Not particularly. 16 Q. When did you consider how Ms. Owens and 17 Ms. Hubbard might react? 18 A. When did I consider how they would react? 19 Q. Yes, ma'am. 20 A. I'm not exactly sure what you mean how 21 would I consider. 22 Q. You told me you thought about how they 23 might react. You thought about that. What</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 162

1 did you think about it?

2 A. I thought about that before I applied.

3 Q. Did you think about it at any time that you

4 were working on the job specs or the

5 announcement for the position?

6 A. No, I did not.

7 Q. And why did you think about them, how they

8 might react?

9 A. I thought about how they would react

10 because we were all three at the same

11 classification. We had been very close as

12 friends and I often considered their

13 feelings. They were very close to me at

14 one time and they would come and confide in

15 me with various things. And I was always

16 considering, you know, feelings.

17 Q. Did Mr. Dillihay encourage you to apply?

18 A. No, he did not.

19 Q. Did Ms. Lynn encourage you to apply?

20 A. No, she did not.

21 Q. Did Commissioner Houston encourage you to

22 apply?

23 A. He did not.

Page 163

1 Q. Was there ever an understanding in your

2 mind, Ms. Benson, that this job was being

3 created for you?

4 A. No.

5 Q. You are aware that the qualifications for

6 the job as reflected on both the job specs

7 and the job specification are remarkably

8 similar to your qualifications, are they

9 not?

10 A. I'm not aware. I guess at the time. Now

11 that I look at it I qualify. Obviously I

12 qualify.

13 Q. Well, you had a bachelor's degree in one of

14 the fields listed for the qualifications,

15 did you not?

16 A. My bachelor's degree is in health services

17 administration. Health services

18 administration is not particularly listed

19 as a specific degree. It just says a

20 related or related field.

21 Q. Would that be a related field?

22 A. Yes, it would be.

23 Q. And you had --

Page 164

1 A. Obviously it must have been if I qualified.

2 Q. And you had a master's degree in one of the

3 specific fields; correct?

4 A. I have a master's degree in public

5 administration.

6 Q. Right. Which is a specific field that's

7 listed; correct?

8 A. That is correct.

9 Q. And you have work experience in the

10 government and public sector; correct?

11 A. That is correct.

12 Q. And you have work experience in a health

13 care setting; correct?

14 A. Obviously working in mental health that is

15 a health care setting, yes.

16 Q. And you had extensive experience, 72 months

17 or more, working in a professional

18 personnel management position; correct?

19 A. Obviously being qualified for the position

20 I had all of the criteria.

21 Q. And you had experience of 24 months or more

22 in a supervisory capacity; correct?

23 A. If that's reflected on my application. I

Page 165

1 need to go back and count up the exact

2 supervisory. I assume I did.

3 (Plaintiffs' Exhibit 69 was marked

4 for identification.)

5 Q. Well, in fact, let me show you what I'm

6 marking Plaintiffs' Exhibit 69. You

7 testified earlier you told me about how

8 when you received applications under your

9 hypothetical you would score the

10 application as to whether the applicant met

11 the minimum qualifications for the

12 position. Do you remember that?

13 A. That's correct.

14 Q. And do you understand that Plaintiffs'

15 Exhibit 69 is an evaluation form of your

16 application for the position of

17 Departmental Assistant Personnel Manager?

18 A. I see that it is.

19 Q. Have you seen this before?

20 A. No, I have not.

21 Q. Is it true that based upon Plaintiffs'

22 Exhibit 69 that you received a perfect

23 score when it came to the qualifications

Page 166

1 for the position?  
 2 A. I see that there's a score of 10. I don't  
 3 know about perfect, but there's a score of  
 4 10 on this evaluation.  
 5 Q. Very high score; right?  
 6 MR. NIX: Object to the form. You  
 7 can answer. I objected to the  
 8 form of the question, but you  
 9 can answer the question if you  
 10 do have an answer.  
 11 A. And your question?  
 12 Q. Would you agree with me that that's a very  
 13 high score?  
 14 MR. NIX: Object to the form.  
 15 A. Well, it's higher than normally. The  
 16 highest points that you can get, I think,  
 17 would be a score of 10.  
 18 Q. Which would mean that this would be a  
 19 perfect score; right?  
 20 A. If you want to say it that way, I guess  
 21 so.  
 22 Q. And is it your belief that it's just  
 23 coincidental that you worked so much on the

Page 167

1 drafting of specifications and announcement  
 2 for this position and you happen to have a  
 3 perfect score for such qualifications?  
 4 A. Is it my understanding?  
 5 Q. Do you believe it's just coincidence?  
 6 A. I assume so.  
 7 Q. Tell me, if you will, about the specific  
 8 research that you did. You told me  
 9 generally about that research, but we never  
 10 broke it down into specifically what you  
 11 looked at. You told me you believe you  
 12 would have looked at some documents from  
 13 when this old position existed back when  
 14 there was a Departmental Assistant  
 15 Personnel Manager.  
 16 A. That's correct.  
 17 Q. And I think Mr. Ervin testified -- don't  
 18 hold me to it, but something to the effect  
 19 that that position was abolished or may  
 20 have been abolished at some point after he  
 21 left the department. Do you remember when  
 22 that position no longer existed?  
 23 A. I don't remember the exact date.

Page 168

1 Q. Because you continued to work in the  
 2 central personnel office after he left?  
 3 A. I did.  
 4 Q. Correct? Because he -- I know at some  
 5 point he worked there and then I think he  
 6 left for some family reasons; is that  
 7 correct?  
 8 A. That's my understanding.  
 9 Q. And I forget the exact date, but it would  
 10 have been sometime in the nineties;  
 11 correct?  
 12 A. Somewhere along that time.  
 13 Q. And he also told us there was an individual  
 14 whose name escapes me currently who held  
 15 that same position --  
 16 A. Anthony Dikes.  
 17 Q. You're right. He mentioned Mr. Dikes. And  
 18 when did Mr. Dikes leave that position?  
 19 A. I don't remember the exact date.  
 20 Q. Would it have been in the nineties?  
 21 A. I don't really recall specifically.  
 22 Q. Do you know why Mr. Dikes left?  
 23 A. I don't know whether he retired. I don't

Page 169

1 recall.  
 2 Q. Well, did Mr. Dikes become the Assistant  
 3 Departmental Personnel Manager when  
 4 Mr. Ervin left that position?  
 5 A. I can't recall. I think he was in an  
 6 acting capacity, but I can't say for sure.  
 7 Q. But Mr. Dikes was the last person to hold  
 8 the position of Departmental Assistant  
 9 Personnel Manager before you obtained that  
 10 position back in 2006; correct?  
 11 A. Thomas King was the personnel director,  
 12 Butch King.  
 13 Q. Not the personnel director, the assistant.  
 14 A. The assistant?  
 15 Q. The Departmental Assistant Personnel  
 16 Manager.  
 17 A. Thomas King was in a capacity as assistant  
 18 personnel director.  
 19 Q. Was that after Mr. Dikes?  
 20 A. I believe that was before Mr. Dikes.  
 21 Q. And this is what I'm trying to ask. I'm  
 22 sorry if I'm not doing a good job of asking  
 23 it. I'm just trying to figure out who was

Deposition of Marilyn B. Benson

June 24, 2008

Page 170

1 the last person to hold the job of  
2 Departmental Assistant Personnel Manager  
3 before you.  
4 A. I think it was Mr. Ervin. If my memory  
5 serves me correctly, I think it was  
6 Mr. Ervin.  
7 Q. And that would have been back in the  
8 nineties sometime?  
9 A. I don't remember the exact date.  
10 Q. Well, he did become the departmental  
11 manager, the personnel manager I think in  
12 '98. Does that sound about right?  
13 A. That sounds about right.  
14 Q. So he would have held that position  
15 sometime before then?  
16 A. Most likely.  
17 Q. When Mr. Ervin left, is it your testimony  
18 that the position was never refilled -- the  
19 Departmental Assistant Personnel Manager?  
20 A. That is correct.  
21 Q. Do you know why it was never refilled or  
22 filled? I don't know if refilled is the  
23 proper word.

Page 171

1 A. I believe the position was abolished due to  
2 funding, if my memory serves me correctly.  
3 Q. Any other reason?  
4 A. I can't recall right now.  
5 Q. And when you say it was abolished, did  
6 it -- did the position remain there  
7 unfulfilled or was there some type of  
8 action by the commissioner or the central  
9 personnel office actually eliminating that  
10 position?  
11 A. Normally when a position is abolished, it  
12 is just eliminated.  
13 Q. Was there some affirmative act by either  
14 the commissioner or the personnel office  
15 eliminating that job, abolishing the job,  
16 using your words?  
17 A. That position would have to be removed out  
18 of the GHRS system.  
19 Q. So I take it, then, that the state  
20 personnel office would have had to have  
21 been notified that y'all were abolishing  
22 that position?  
23 A. Yes.

Page 172

1 Q. You don't know when that would have  
2 occurred?  
3 A. I don't. I don't.  
4 Q. Now, did you go back in preparing the job  
5 specs or doing your research for Mr. Ervin,  
6 did you go back and look at the old specs  
7 for that position?  
8 A. I reviewed old Form 40s, as much  
9 information as I could. If Form 40s were  
10 not in existence, preappraisals that were  
11 in place from Mr. King and from Mr. Ervin.  
12 Q. So you looked at Mr. King and Mr. Ervin's  
13 old Form 40s or preappraisals --  
14 A. That's correct.  
15 Q. -- when they held the position of  
16 Departmental Assistant Personnel Manager?  
17 A. That's correct.  
18 Q. Did you look at anything else regarding  
19 that old position other than the Form 40s  
20 and preappraisals?  
21 A. From previous files? Is that what you're  
22 referring to or from --  
23 Q. From when that previous position existed.

Page 173

1 A. You're not talking about web site?  
2 Q. No. I'm going to ask you about that. I'm  
3 just saying back when that previous  
4 position existed, did you look at anything  
5 else other than the old Form 40s and  
6 preappraisals?  
7 A. To the best of my knowledge, I think that  
8 was it.  
9 Q. Did you maintain a file for the research  
10 that you were doing?  
11 A. All the information that I compiled my  
12 attorneys have.  
13 Q. But did you maintain a file?  
14 A. I kept notes.  
15 Q. Did you have any handwritten notes?  
16 A. I think I did have some handwritten notes.  
17 Of course, they were used in developing the  
18 actual job spec.  
19 Q. But you would have had some handwritten  
20 notes that were used in developing the job  
21 spec?  
22 A. Yes. Most likely.  
23 Q. And do you recall what those notes were of?

Deposition of Marilyn B. Benson

June 24, 2008

Page 174

1 A. Most likely they were specific job tasks,  
 2 duties and responsibilities that would have  
 3 been used in the development of the actual  
 4 job spec.  
 5 Q. All right. So you looked at Form 40s, you  
 6 looked at preappraisals, and you told me  
 7 you went on some web sites.  
 8 A. I did.  
 9 Q. What web sites did you visit?  
 10 A. I looked at Tennessee. I looked at  
 11 Florida, Georgia. Those states in  
 12 particular are the ones that we normally  
 13 researched whenever we would create  
 14 positions or even had done salary surveys.  
 15 In particular the state of Georgia we have  
 16 more contact with them because they're more  
 17 closely modeled after our mental health  
 18 department. I spoke with Joel Rose, who  
 19 was the manager of classification and pay.  
 20 Q. Joel?  
 21 A. Joel, J-O-E-L, Rose, R-O-S-E.  
 22 I spoke with him on the phone and  
 23 talked with him about trying to get some

Page 175

1 information, and he directed me to the web  
 2 site.  
 3 Q. Okay. Did he give you any information  
 4 other than directing you to the web site?  
 5 A. No.  
 6 Q. So basically what I assume you're telling  
 7 me is you told him what you needed and he  
 8 said, well, I think you can get all of that  
 9 from this web site, you need to go here?  
 10 A. Yes. He told me --  
 11 Q. And he didn't volunteer anything else?  
 12 A. No.  
 13 Q. Did you download anything from the Georgia  
 14 web site?  
 15 A. I can't recall downloading anything.  
 16 Q. Do you know what web site you visited for  
 17 Georgia?  
 18 A. It was for the state of Georgia, the  
 19 Department of Mental Health.  
 20 Q. Are you sure it was the mental health  
 21 department? Could it have been some other  
 22 department?  
 23 A. Now, their name is a little bit different.

Page 176

1 It's not the Department of Mental Health.  
 2 It's human -- I can't say specifically what  
 3 it is, but I don't think it's directly  
 4 mental health.  
 5 Q. And --  
 6 A. The department name is a little different.  
 7 Q. And did you download anything off the  
 8 Georgia web site?  
 9 A. I don't recall downloading anything.  
 10 Q. When I say download, I mean either save a  
 11 document from that web site or print a  
 12 document from the web site.  
 13 A. I think I printed some information, yes.  
 14 That's the information that I submitted to  
 15 Mr. Ervin.  
 16 Q. Did you keep a copy of that information?  
 17 A. I don't recall whether I did or not.  
 18 Q. If you had, would you have given it to your  
 19 attorney?  
 20 A. Yes.  
 21 Q. Did you talk to Florida -- anybody with the  
 22 state of Florida?  
 23 A. I did not talk with anybody in Florida.

Page 177

1 Q. Did you visit a web site for the state of  
 2 Florida?  
 3 A. I think I did.  
 4 Q. Do you recall the web site?  
 5 A. Not off the top of my head, no.  
 6 Q. Did you download anything?  
 7 A. No, I did not.  
 8 Q. Did you visit a web site for the state of  
 9 Tennessee?  
 10 A. I did.  
 11 Q. Did you talk with anyone from the state of  
 12 Tennessee?  
 13 A. No, I did not.  
 14 Q. Did you download any documents --  
 15 A. I did not.  
 16 Q. -- from the Tennessee web site?  
 17 Do you recall looking at any job specs  
 18 or job announcements from the state of  
 19 Tennessee?  
 20 A. I did view some, but they were not really  
 21 what we were looking for in terms of making  
 22 sure that it was close to our expectations  
 23 for the Department of Mental Health.



Page 178	Page 180
<p>1 (Plaintiffs' Exhibit 70 was marked 2 for identification.) 3 Q. Let me show you what I have marked as 4 Plaintiffs' Exhibit 70. Is that what you 5 would have downloaded from the state of 6 Georgia? 7 A. I remember printing this off. 8 Q. It says human resources director; right? 9 A. Yes. 10 Q. You can see on that second page, at least 11 according to this web site, Georgia appears 12 to allow substitution of work experience, 13 don't they, for human resource directors? 14 A. If you're referencing, what, to equivalent 15 work? 16 Q. Uh-huh (positive response). 17 A. Yes. 18 Q. And when you visited the Georgia web site, 19 was it your understanding that Georgia did 20 allow substitution for comparable 21 positions? 22 A. And I think that was the reason why the 23 substitution clause was originally included</p>	<p>1 MR. NIX: Object to the form. She 2 can answer. 3 Q. Is that right? 4 A. Yes. 5 Q. Were you aware that they allowed 6 substitution? 7 A. Yes. 8 (Plaintiffs' Exhibit 72 was marked 9 for identification.) 10 Q. And also if you'll look at what I've marked 11 as Plaintiffs' Exhibit 72. Again, human 12 resources director position for the state 13 of Tennessee. 14 A. It's the same document, is it not? 15 Q. Did I mark the same one? 16 MR. NIX: It looks like it's the 17 same one. 18 A. It looks like it's the same document. 19 Q. Human resources manager and human resources 20 director. If you'll look under their 21 minimum qualifications, they allow 22 substitution for that position too; 23 correct?</p>
Page 179	Page 181
<p>1 in the first draft of the job spec. 2 Q. Because Georgia allowed it? 3 A. If I recall correctly. 4 (Plaintiffs' Exhibit 71 was marked 5 for identification.) 6 Q. Do you recall looking at a human resource 7 manager position for the state of 8 Tennessee, which I have marked as 9 Plaintiffs' Exhibit 71? Do you recall 10 looking at that job spec? 11 A. I believe I did. 12 Q. If you'll look over on the second page 13 under minimum qualifications. You were 14 aware that Tennessee allows substitution 15 also; is that correct? See under minimum 16 qualifications? 17 A. It states substitution. 18 Q. Would that have been another reason that 19 you probably would have included the 20 substitution clause? 21 A. It may or may not have been. 22 Q. But you were aware that they allowed 23 substitution?</p>	<p>1 A. That's what it states. 2 Q. And you were aware of that when you visited 3 their web sites, though; right? 4 MR. NIX: Do you recall looking at 5 that? 6 A. I don't really recall looking at this. 7 Q. At Plaintiffs' Exhibit 72? 8 A. I think when I visited the web site and 9 printed off information I just handed the 10 information to Mr. Ervin for his review. 11 Q. So you think you would have printed that 12 off, though, for him to review? 13 A. It's possible, yes. 14 Q. And under that job spec for human resources 15 director from Tennessee they allow 16 substitution also? 17 A. That's what it states. 18 Q. Did you ever tell anyone in the central 19 personnel office other than Becky Taylor 20 that you were working on researching and 21 preparing job specs for the position of 22 Assistant Departmental Personnel Manager? 23 MR. NIX: Let me object to the</p>



Page 182

1 form. I don't think she's  
2 testified that she told Becky  
3 Taylor that she was working  
4 on --

5 Q. Well, you did tell me that you asked Becky  
6 Taylor to help you get a PCQ number?

7 A. That's correct.

8 Q. And did you tell Becky Taylor what you were  
9 working on when you asked for her help?

10 A. It wasn't necessary for me to tell her what  
11 I was working on.

12 MR. NIX: Excuse me, Flynn. When  
13 you refer to the PCQ number,  
14 are you referring to --

15 MR. MOZINGO: Yeah. On the memo.  
16 She told me she got that PCQ  
17 number from Becky Taylor  
18 because that's what Becky did,  
19 she researched PCQs.

20 MR. NIX: Which number are you  
21 referring to?

22 MR. MOZINGO: Plaintiffs' Exhibit  
23 49.

Page 184

1 A. Well, there was conversations with June  
2 Lynn in her capacity as the advisory  
3 attorney.

4 Q. Well, I mean in the central personnel  
5 office.

6 A. No.

7 Q. In other words, all those individuals we  
8 listed, Ms. Owens, Ms. Hubbard,  
9 Ms. Taylor -- I have to go through my  
10 notes. Maybe that will help me and you at  
11 the same time. Here we are. You didn't  
12 tell Ms. Owens and Ms. Hubbard that you  
13 were working on the assignment for the --

14 A. I had no discussions with either one of  
15 them.

16 Q. -- working on the assignment for the  
17 Assistant Departmental Personnel Manager?

18 A. I had no discussions with either one of  
19 them.

20 Q. And you had no discussions with Becky  
21 Taylor to your memory regarding that  
22 assignment; correct?

23 A. No.

Page 183

1 MR. NIX: She said she did not  
2 recall whether it was her or  
3 Mr. Ervin that got that  
4 number. That was her  
5 testimony.

6 MR. MOZINGO: All right. Thank  
7 you. I remember it  
8 differently, but the record  
9 speaks for itself.

10 Q. Let me go back, then, since your attorney  
11 made that very good point. Did you ever  
12 tell Becky Taylor that you were working on  
13 researching and drafting job specs for the  
14 position of Departmental Assistant  
15 Personnel Manager?

16 A. I don't remember specific conversations  
17 with Becky regarding that.

18 Q. Did you have conversations with anyone else  
19 in the central personnel office besides  
20 Henry Ervin regarding your work on doing  
21 research and preparing job specifications  
22 for the position of Departmental Assistant  
23 Personnel Manager?

Page 185

1 Q. And you had no discussions with anyone else  
2 there in the central personnel office other  
3 than Henry Ervin that you were working on  
4 that assignment?

5 A. None that I can recall.

6 Q. Did Mr. Ervin ask you not to share with the  
7 personnel staff the nature of the  
8 assignment you were working on?

9 A. No, he did not.

10 Q. Did Mr. Ervin ever mention to the staff at  
11 any staff meetings that you attended that  
12 the position of Departmental Assistant  
13 Personnel Manager was being created?

14 A. There was a staff meeting in which he made  
15 the announcement that the position was  
16 going to be created.

17 Q. Do you remember when that staff meeting  
18 occurred?

19 A. I don't remember the date.

20 Q. Well, to your best judgment, would it have  
21 occurred either before or after the  
22 creation of Plaintiffs' Exhibit 49?

23 A. I don't recall.

Page 186

1 Q. You have no best judgment of when it would  
2 have occurred, then; is that correct?  
3 A. I'm sure it probably had to be after. If I  
4 remember correctly, I'm sure it was  
5 probably sometime after, but I don't know  
6 specific date.  
7 Q. How often did you-all have central  
8 personnel staff meetings?  
9 A. On an average I guess maybe once a month,  
10 once every two months. They were not that  
11 regular.  
12 Q. Was it customary during staff meetings for  
13 you-all to discuss job specifications that  
14 were being drafted or revised?  
15 A. Not customary, no.  
16 Q. Was it a common event at staff meetings to  
17 discuss job specifications that were being  
18 created, drafted or revised?  
19 A. It could have been. May or may not have  
20 been.  
21 Q. I don't know what the answer is quite  
22 honest. Could have been. May or may not  
23 have been. Were they ever discussed at

Page 187

1 staff meetings?  
2 A. There may have been a time when, you know,  
3 some were discussed. I can't say  
4 specifically when they would have been  
5 discussed.  
6 Q. Well, was there a time in 2005 that they  
7 were discussed?  
8 A. I don't remember.  
9 Q. Let me show you what was previously marked  
10 as Defendant's Exhibit 13 to Joan Owens'  
11 deposition. And by the way, that  
12 highlighting on there -- do you see where  
13 it's highlighted?  
14 A. I see.  
15 Q. That's from me. That was made off one of  
16 my copies and I had highlighting on there.  
17 Can you identify what that is?  
18 A. It's an announcement log that's kept for  
19 central office positions.  
20 Q. And who is responsible for maintaining the  
21 announcement log?  
22 A. At that particular time I was responsible  
23 for maintaining the log.

Page 188

1 Q. And is all of that handwriting, then, on  
2 Defendant's Exhibit 13 yours?  
3 A. Not all of it.  
4 Q. Can you tell me which handwriting would not  
5 be yours?  
6 A. That's not my handwriting.  
7 Q. Would you do me a favor, then, and just  
8 take this pen and put a star or some -- or  
9 a mark out to the side of the handwriting  
10 that is not yours.  
11 A. (Witness complies).  
12 Q. And for the record you've put a star.  
13 There are already some existing checkmarks  
14 there. I don't know where those came  
15 from. But the mark that you have put is a  
16 star?  
17 A. Yes.  
18 Q. So you can only identify one entry in this  
19 announcement log that is not your  
20 handwriting, and that would be the entry  
21 for the MH Specialist III in-house?  
22 A. That's correct.  
23 Q. Announcement number 05-56; is that correct?

Page 189

1 A. That's correct.  
2 Q. Do you know whose handwriting that is?  
3 A. It looks like Ms. Owens.  
4 Q. Was that one of your responsibilities was  
5 to maintain the announcement log?  
6 A. In my capacity as Personnel Specialist III,  
7 yes.  
8 Q. Do you still maintain that announcement  
9 log?  
10 A. No, I do not.  
11 Q. Let me show you what has previously been  
12 marked as Plaintiffs' Exhibit 57, and I'll  
13 represent to you that those are your  
14 performance appraisals -- I'm sure there  
15 might be some preappraisals in there --  
16 that were marked and discussed during the  
17 deposition of Mr. Henry Ervin.  
18 MR. NIX: Flynn, when you get to a  
19 breaking point, let's take a  
20 break.  
21 MR. MOZINGO: Sure.  
22 A. All of these are my performance  
23 evaluations.

Deposition of Marilyn B. Benson

June 24, 2008

Page 190

1 Q. And these performance evaluations stretch  
2 from a period from approximately 1998 to  
3 the present; is that correct?  
4 A. That's correct.  
5 Q. Now, you were not hired as Departmental  
6 Assistant Personnel Manager until March  
7 2006?  
8 A. That's correct.  
9 Q. Now, in your performance appraisals you  
10 were being appraised on your primary job  
11 functions and how well you were performing  
12 your primary job functions; correct?  
13 A. Correct.  
14 Q. Now, is it true that as early as 2003 that  
15 you were being appraised as the acting  
16 director of human resources during the  
17 absence of Mr. Ervin? And that's document  
18 Bates stamped ADMH 01-03-00052.  
19 A. That is a part of the job duty, yes.  
20 Q. But you were -- that was approximately  
21 three years before the -- two to three  
22 years before the creation of the position  
23 of Assistant Department Personnel Manager;

Page 191

1 correct?  
2 A. That's correct.  
3 Q. And I see that you received a four from  
4 Mr. Ervin, which would be the highest score  
5 you could get; correct?  
6 A. That's consistently exceeds standard.  
7 Q. Was there any discussion with Mr. Ervin  
8 back in 2003 or before then that you would  
9 start -- that he would start evaluating you  
10 as the acting director when he was not  
11 present?  
12 A. I was called upon to be the acting director  
13 because I was the senior personnel  
14 specialist in the department.  
15 Q. What do you mean by senior personnel  
16 specialist?  
17 A. Senior personnel specialist meaning the one  
18 who had more seniority within the office.  
19 And usually whenever the director was out  
20 the person with the next level of seniority  
21 would be available to be in charge.  
22 Q. More seniority based upon your length of  
23 service with the Department of Human

Page 192

1 Resources or your length of service there  
2 in the central office?  
3 A. It could be both, human resources and with  
4 the department.  
5 Q. In your case do you know what it was based  
6 upon?  
7 A. It was with personnel, with human  
8 resources.  
9 MR. MOZINGO: Let's go ahead and  
10 take a break.  
11 (Brief recess was taken.)  
12 (Plaintiffs' Exhibit 73 was marked  
13 for identification.)  
14 Q. Ms. Benson, let me show you what I've  
15 marked Plaintiffs' Exhibit 73. And I'm  
16 going to represent to you that I believe  
17 this to be a global exhibit. And what I  
18 mean by that I believe it to be the job  
19 evaluation committee meeting minutes from  
20 January 2004 until --  
21 MR. NIX: Is that what we  
22 produced?  
23 MR. MOZINGO: Uh-huh (positive

Page 193

1 response).  
2 Q. -- until November 6, 2007. So about the  
3 end of 2007. This was all produced by your  
4 lawyers and it shows your Bates stamp  
5 number. I was just wondering if you could  
6 please verify that exhibit for me.  
7 MR. NIX: You want her to verify  
8 whether it's all of the  
9 meetings? I think it is, but  
10 I don't want to swear to it.  
11 Q. Well, if you could verify that it's the job  
12 evaluation committee meeting minutes from,  
13 I believe, the first of '04 until the end  
14 of '07.  
15 MR. NIX: I saw one the other day  
16 that I wondered whether we  
17 produced that I've been  
18 meaning to look back at to  
19 see, because we got them at  
20 different times and all that  
21 kind of stuff.  
22 A. Yes. These are the JEC minutes.  
23 Q. Do you know if that would be the entire set

Deposition of Marilyn B. Benson

June 24, 2008

Page 194

1 of minutes between the first of 2004 to the  
 2 end of 2007?  
 3 A. As far as I know. It appears to be.  
 4 Q. Who was the secretary for the JEC, the job  
 5 evaluation committee?  
 6 A. I was the primary secretary for the JEC.  
 7 Q. Were you responsible for taking and  
 8 transcribing the minutes?  
 9 A. Yes.  
 10 Q. And did you prepare most of the minutes  
 11 that have been marked Plaintiffs' Exhibit  
 12 73?  
 13 A. Probably the majority of them. There may  
 14 have been -- I see some submitted by  
 15 Ms. Hubbard back in 2004. I believe  
 16 Ms. Owens also may have submitted some at  
 17 some time when I was unavailable to do the  
 18 minutes.  
 19 Q. So Ms. Hubbard and Ms. Owens were capable  
 20 of filling in for you on the JEC committee  
 21 and taking the minutes and preparing the  
 22 minutes?  
 23 A. At the request of Mr. Ervin.

Page 195

1 Q. Can you tell me where it's reflected in the  
 2 minutes where the job evaluation committee  
 3 approved the specifications for the  
 4 position of Departmental Assistant  
 5 Personnel Manager?  
 6 A. I'd have to go through and find the exact  
 7 meeting date.  
 8 Q. Well, let me ask you this, then, while you  
 9 go through there. Did the job evaluation  
 10 committee approve the specifications for  
 11 the position of Departmental Assistant  
 12 Personnel Manager?  
 13 A. All newly created positions have to go  
 14 before the job evaluation committee. And  
 15 normally it's the policy of the department  
 16 whenever there's a new position that's  
 17 created, the job spec also is approved at  
 18 that time.  
 19 Q. And was that policy adhered to in the  
 20 creation of the position of Departmental  
 21 Assistant Personnel Manager?  
 22 A. To the best of my knowledge it was.  
 23 Q. Now, let me direct your attention to the

Page 196

1 minutes for July 22, 2005. Are you there?  
 2 A. Yes.  
 3 Q. You'll see the second item it says review  
 4 of the revised job specifications for the  
 5 community service specialist series.  
 6 A. What page are you on?  
 7 Q. The first page, the second item in bold  
 8 letters.  
 9 A. Okay.  
 10 Q. Do you see that?  
 11 A. Third paragraph.  
 12 Q. Right. Third paragraph.  
 13 A. Uh-huh (positive response).  
 14 Q. And we know from these minutes that the --  
 15 at least the revised job specifications  
 16 were reviewed because it is unambiguous  
 17 there in the minutes; correct?  
 18 A. What are you asking me?  
 19 Q. It's clear from the minutes for July 22nd,  
 20 2005 that the job evaluation committee  
 21 reviewed the revised job specifications for  
 22 the community service specialist series?  
 23 A. That's what's stated. Old and new specs

Page 197

1 were handed out by the committee -- out for  
 2 committee members to compare.  
 3 Q. By the way, if you'll flip to page 3. Is  
 4 that your signature on the bottom?  
 5 A. It is.  
 6 Q. Did you prepare the minutes, then, for July  
 7 22nd, 2005?  
 8 A. Obviously my signature is there. I did.  
 9 Q. Now, if you'll look to the second page down  
 10 at the bottom it says central office  
 11 positions were all approved. Do you see  
 12 that?  
 13 A. I see that.  
 14 Q. And if you look at the top of the third  
 15 page, it mentions -- I'm sorry. It's cut  
 16 off. It's on the second and third page.  
 17 The Assistant Department Personnel Manager  
 18 position. Do you see that?  
 19 A. I see that.  
 20 Q. Do you know if the job specifications for  
 21 that position were approved or reviewed by  
 22 the job evaluation committee on July 22nd,  
 23 2005?



Page 198

1 A. To the best of my knowledge, yes.  
 2 Q. But the minutes do not say that the job  
 3 specifications were reviewed or approved,  
 4 does it?  
 5 A. No, it does not state that.  
 6 Q. And if you'll look over, for example, to  
 7 the very last one, the very last minutes in  
 8 your possession. Particularly I'm looking  
 9 at February 14th, 2007. Do you see that?  
 10 And if you'll -- And the last page of those  
 11 minutes it has a signature line for Marilyn  
 12 Benson. Again, I'm looking at February  
 13 14th, 2007. Should be the very last  
 14 minutes.  
 15 A. It's not the very last one, but it's back  
 16 up here.  
 17 Q. I'm sorry. It was the last one I had.  
 18 Mine may not be in order like yours.  
 19 A. What was your question about the minutes?  
 20 Q. Look to the last page, if you will, for  
 21 those minutes. It has a signature line for  
 22 you. Do you know if you would have  
 23 prepared those minutes?

Page 199

1 A. Most likely I did. I remember the details  
 2 of the ...  
 3 Q. If you look at the last page above your  
 4 signature line, paragraph number nine.  
 5 There it says job specifications for the  
 6 RN-IV and RN-V were given to the committee  
 7 members for their review; correct?  
 8 A. Correct.  
 9 Q. And that's unambiguous; right?  
 10 A. Correct.  
 11 Q. And the minutes for the July 22nd, 2005 do  
 12 not state that the job specification for  
 13 the position of Departmental Assistant  
 14 Personnel Manager were given to the  
 15 committee for their review, do they?  
 16 A. It's not stated, but that does not  
 17 necessarily mean that they're not given  
 18 out. In the process of doing minutes,  
 19 every single word is not recorded. It's  
 20 just more or less a summarization of  
 21 everything that happened. They may or may  
 22 not have been handed out.  
 23 Q. Do you know for a fact that the job

Page 200

1 specifications were given to the job  
 2 evaluation committee for the position of  
 3 Departmental Assistant Personnel Manager on  
 4 July 22nd, 2005?  
 5 A. To the best of my knowledge they were.  
 6 Q. But that is not stated in the minutes?  
 7 A. It's not stated in the minutes.  
 8 Q. And you prepared those minutes; correct?  
 9 A. Yes, I did.  
 10 Q. Is it true that the purpose of the minutes  
 11 is to clearly reflect what occurred during  
 12 the meeting of the job evaluation  
 13 committee?  
 14 A. It's a summarization of the major things  
 15 that happened and the major things that  
 16 were discussed in the meeting. Correct.  
 17 As I stated earlier, there may not be every  
 18 single word recorded or every single thing  
 19 recorded in terms of what was actually  
 20 covered during the minutes.  
 21 Q. But you have recorded in minutes before  
 22 where -- you've specifically recorded where  
 23 job specifications were reviewed; correct?

Page 201

1 A. Obviously some were recorded.  
 2 Q. In fact, for that July 22nd, 2005 meeting,  
 3 you recorded on the first page where job  
 4 specifications for a position or series of  
 5 positions were reviewed; correct?  
 6 A. It's stated as such.  
 7 Q. And the job evaluation committee can  
 8 approve the creation of a position in one  
 9 meeting and come back and approve  
 10 specifications for that position in another  
 11 meeting, can they not?  
 12 A. They can.  
 13 Q. Let me ask you about Plaintiffs' Exhibit  
 14 46. The knowledge, skills and abilities  
 15 that are listed on Plaintiffs' 46, did you  
 16 have all of those knowledge, skills and  
 17 abilities when you applied for the position  
 18 of Departmental Assistant Personnel  
 19 Manager?  
 20 A. I felt like I had all of the knowledge,  
 21 skills and abilities.  
 22 Q. That are listed on Plaintiffs' Exhibit 46?  
 23 A. Yes.



Deposition of Marilyn B. Benson

June 24, 2008

Page 202	Page 204
<p>1 (Plaintiffs' Exhibit 74 was marked 2 for identification.) 3 Q. Let me show you what's previously been 4 marked as Plaintiffs' Exhibit -- well, it 5 hasn't been marked. Let me mark it now. 6 Let me show you what I'm marking as 7 Plaintiffs' Exhibit 74. Can you identify 8 that for me? 9 A. That's the preappraisal for the Personnel 10 Specialist III position that I was in. 11 Q. And what period is this preappraisal 12 prepared for? 13 A. It says April the 1st of 2003 to April the 14 1st of 2004. 15 Q. Does that accurately reflect your primary 16 job responsibilities for that time period? 17 A. I assume it did. 18 Q. By the way, what experience did you have or 19 do you have concerning grant funding? 20 A. I worked for the section of grants and 21 special projects. That happened to have 22 been one of the areas that we researched is 23 for grants. One of the ladies in</p>	<p>1 A. Not that I can recall. 2 Q. Have you written any grants while you've 3 been employed in the central personnel 4 office? 5 A. Not that I can recall. 6 Q. Which would include up to today's time? 7 A. Yes. 8 Q. So you haven't researched or written any 9 grants while you've been working in the 10 central personnel office? 11 A. No. 12 Q. Let me show you what has been marked 13 Plaintiffs' Exhibit 48. Again, that was 14 marked at another deposition. Mr. Ervin's 15 deposition to be exact. Can you identify 16 that form for me? 17 A. Preappraisal for the Departmental Assistant 18 Personnel Manager position. 19 Q. And this is for the period March 2006 to 20 September 2006; correct? 21 A. That is correct. 22 Q. And does that form list your primary 23 responsibilities as Departmental Assistant</p>
Page 203	Page 205
<p>1 particular by the name of Ann Fain -- who 2 is no longer with the department. She's 3 now deceased. She did a lot of grant 4 writing and we would research information 5 for her. 6 Q. And so that was back when you first came to 7 work with mental health back in '84, that 8 time frame? 9 A. '83, '84, somewhere along in there. 10 Q. So you worked in the department that did 11 grants and -- 12 A. Grants and special projects was the name of 13 the section that I was in. 14 Q. And did you learn, while working in that 15 department, how to research grants? 16 A. Yes. 17 Q. How to apply for grants? 18 A. Yes. 19 Q. Have you researched any grants while you've 20 been employed in the central personnel 21 office? 22 A. No. 23 Q. Have you written --</p>	<p>1 Personnel Manager for the time period 2 referenced? 3 A. Yes, it does. 4 Q. And I didn't ask you this. Let me do it 5 now. I know you're recuperating from 6 pneumonia. Are you under any medication 7 today that affects your ability to hear and 8 understand and respond to my questions? 9 A. No. Not that I can think of. 10 Q. What has been marked Plaintiffs' Exhibit 11 48, was that your very first preappraisal 12 when you were promoted to the position of 13 Departmental Assistant Personnel Manager? 14 A. At the time that a person goes into a new 15 position, there is a six-month probationary 16 period. These were the duties and 17 responsibilities that I had during that 18 six-month period. 19 Q. And did those duties and responsibilities 20 remain the same after your probation? 21 A. Yes. 22 Q. Now, it says that you provide supervision 23 to professional and paraprofessional</p>

Page 206	Page 208
<p>1 staff. Would that be the -- I'm trying to</p> <p>2 determine who professional and</p> <p>3 paraprofessional staff could be. Would</p> <p>4 that be like your personnel assistants or</p> <p>5 your administrative support assistants?</p> <p>6 A. Yes.</p> <p>7 Could I make a clarification? It just</p> <p>8 came to my mind, something that you had</p> <p>9 asked me earlier before the break. You</p> <p>10 asked me about the number of people that I</p> <p>11 supervised. I was trying to remember all</p> <p>12 the names. Brenda Lacey was also in our</p> <p>13 office. Now, I supervised Brenda Lacey.</p> <p>14 Brenda Lacey was the Personnel Assistant II</p> <p>15 before Gina -- I think before Gina Watts</p> <p>16 took the position. I was just trying to</p> <p>17 remember everybody's name. I just wanted</p> <p>18 to make that clarification.</p> <p>19 Q. Thank you. And I appreciate that. I</p> <p>20 realize it's difficult to remember</p> <p>21 everyone. I realize that's difficult.</p> <p>22 Let me look at number four here on your</p> <p>23 Plaintiffs' Exhibit 48. It says maintain</p>	<p>1 where you examine positions and you may</p> <p>2 revise specs or you may combine classes for</p> <p>3 positions?</p> <p>4 MR. NIX: I'm sorry?</p> <p>5 A. I'm not sure I understand your question.</p> <p>6 Q. In maintaining that position and pay</p> <p>7 structure, I'm trying to recall this</p> <p>8 morning some of your testimony about how</p> <p>9 you would go and make sure that the pay</p> <p>10 structure is competitive for our positions</p> <p>11 compared to other states and you make sure</p> <p>12 that, I guess, classifications are</p> <p>13 consistent with -- for exempt jobs they're</p> <p>14 consistent with maybe similar</p> <p>15 classifications for merit jobs. Is that</p> <p>16 the same thing?</p> <p>17 A. That may be one aspect of it. Again, as I</p> <p>18 stated earlier, whenever there are</p> <p>19 recommendations for changes in salary</p> <p>20 ranges, we want to make sure that all of</p> <p>21 our personnel managers are made aware of</p> <p>22 the changes. There's usually a</p> <p>23 classification pay plan that is distributed</p>
Page 207	Page 209
<p>1 ongoing class and pay information for</p> <p>2 governmental agencies and private sector.</p> <p>3 Is that where you maintain your exempt</p> <p>4 classifications and pay structure for your</p> <p>5 nonmerit positions there in the department?</p> <p>6 A. That is correct. That is correct.</p> <p>7 Q. And does that --</p> <p>8 A. Also for whenever there are changes in the</p> <p>9 merit system classes making everyone aware</p> <p>10 of the range changes. From time to time</p> <p>11 the state personnel may make</p> <p>12 recommendations for their merit system</p> <p>13 classes salaries to be increased. As a</p> <p>14 matter of fact, just recently they made the</p> <p>15 recommendation for the pharmacist's</p> <p>16 salary -- senior pharmacist's salary to be</p> <p>17 increased. And since we normally mirror</p> <p>18 what they do under our exempt system,</p> <p>19 that's something that we also need to be</p> <p>20 made aware of.</p> <p>21 Q. And so in doing that number four referenced</p> <p>22 on Plaintiffs' Exhibit 48, is that where</p> <p>23 you -- I think you described to me earlier</p>	<p>1 to make sure that they're informed about</p> <p>2 any range changes.</p> <p>3 Q. Well, would that be the same in</p> <p>4 coordinating your wage and salary</p> <p>5 information?</p> <p>6 A. Part of that, yes.</p> <p>7 Q. For your nonmerit classes?</p> <p>8 A. Yes.</p> <p>9 Q. Now, when you serve as the -- in the</p> <p>10 absence of the director of human resources</p> <p>11 as referenced in number 10 there, is that</p> <p>12 similar to what you previously did when you</p> <p>13 would serve as acting director when --</p> <p>14 before you obtained this promotion back</p> <p>15 when Mr. Ervin would leave? I think we</p> <p>16 covered earlier today some of your job</p> <p>17 evaluations where you were being evaluated</p> <p>18 for serving in Mr. Ervin's absence. Is</p> <p>19 that generally the same thing?</p> <p>20 A. Yes, it is.</p> <p>21 MR. NIX: Which one are you</p> <p>22 referring to?</p> <p>23 MR. MOZINGO: Number 10.</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 210

1 Q. Do you continue to serve as the secretary  
2 for the job evaluation committee?  
3 A. Yes, I do.  
4 Q. And do you continue to -- In your position  
5 as Departmental Assistant Personnel  
6 Manager, do you continue to attend meetings  
7 for Mr. Ervin in his absence? Like you  
8 told us this morning you would attend the  
9 state personnel managers meetings --  
10 A. Yes, I do.  
11 Q. -- when Mr. Ervin couldn't attend. So you  
12 still attend meetings such as that?  
13 A. Yes, I do.  
14 Q. The wage and class study that was conducted  
15 by the Segal Group, did you contribute to  
16 that study in any way?  
17 A. What do you mean contribute?  
18 Q. Well, I'm aware that it was done, that  
19 there was a wage and class study by the  
20 Segal Group. But I'm wondering did you  
21 participate in that study in any way?  
22 A. Yes, I did. I played a major role in the  
23 study itself. RFPs had to be done. We

Page 211

1 had to develop RFPs in order to get  
2 proposals out to allow someone to be able  
3 to bid. And Segal happened to have  
4 submitted one of the bids. They were  
5 selected. I was involved in getting that  
6 process done, advertising for the RFP.  
7 Q. And let me stop you because I want to make  
8 sure the record reflects you're using an  
9 acronym, which is fine.  
10 A. Request for proposal.  
11 Q. Because I know that acronym, request for  
12 proposal. And that's kind of like a  
13 request for a bid --  
14 A. That's correct.  
15 Q. -- where you ask a service provider to  
16 submit you a proposal and a cost to do a  
17 certain job?  
18 A. Correct.  
19 Q. So the wage and class study, y'all would  
20 have solicited bids on that --  
21 A. That's correct.  
22 Q. -- from providers?  
23 A. That's correct.

Page 212

1 Q. And Segal was one of the providers?  
2 A. Segal was one of the providers.  
3 Q. And you helped prepare the request for  
4 proposal?  
5 A. Yes.  
6 Q. And you helped circulate it or publish it?  
7 A. Publish it also.  
8 Q. When did you do that, do your work in  
9 preparing the RFP and publishing the  
10 request? Do you recall the date?  
11 A. No, I don't.  
12 Q. Do you recall the year?  
13 A. Wage and class started April of '07, so it  
14 had to be probably '06, the beginning. The  
15 initial process began, I think, somewhere  
16 in '06.  
17 Q. Did you have experience doing RFPs?  
18 A. Well, we had help from our contracts  
19 office. That happens to be one of their  
20 specialties. They directed us through the  
21 process in terms of what we needed to do.  
22 Q. Had you prepared an RFP before then, before  
23 this --

Page 213

1 A. No.  
2 Q. -- the Segal study came about?  
3 A. No.  
4 Q. So that was your first RFP?  
5 A. Yes. And they guided us through the  
6 process.  
7 Q. And what's the name of that office that  
8 guided you?  
9 A. Contracts and grants.  
10 Q. Okay. Contracts --  
11 A. The contracts office.  
12 Q. They walked you through the process?  
13 A. Yes.  
14 MR. MOZINGO: Off the record.  
15 (Off-the-record discussion.)  
16 Q. Other than the preparing or working on the  
17 preparation of RFP and publishing your RFP,  
18 what other work did you do towards the wage  
19 and class study?  
20 A. I consulted with the main players from  
21 Segal, the vice president from Segal. I  
22 set up meetings for them to come down and  
23 to meet with the associate commissioners,

Deposition of Marilyn B. Benson

June 24, 2008

Page 214	Page 216
<p>1 also with the HR managers. Also set up  2 meeting places at the facilities for them  3 to meet with the various employees, HR  4 managers. I myself went to on-site  5 personnel in communicating with the  6 personnel managers, communicating with the  7 employees, making them aware of the study,  8 what to expect. We had to distribute  9 questionnaires. Gosh, there was so much  10 work involved. The questionnaire itself  11 was 26 pages, and we had to make  12 presentations to the various employees  13 making them aware of what was to come, the  14 kind of information that we were looking  15 for, the importance of completing the  16 questionnaire, how the questionnaire was  17 going to be used. We also had information  18 put on the web where people could access it  19 if there was any question about the study  20 itself. So there were just various phases  21 of the study itself that I had to be  22 responsible for.  23 Q. Did you have any assistance from anyone in</p>	<p>1 meetings or weekly or however often you  2 have them, was it a practice during those  3 staff meetings where everybody would share  4 what they were working on and what they  5 were doing?  6 A. As a general rule.  7 Q. As a general rule you would?  8 A. Yes.  9 Q. And did they do that in the Segal study?  10 Would people in their monthly meetings talk  11 about what they were working on for the  12 Segal study?  13 A. I really can't recall.  14 MR. NIX: I'm sorry. Were you  15 asking her about other  16 departments other than the  17 central --  18 MR. MOZINGO: No. I was just  19 asking about central office.  20 (Plaintiffs' Exhibit 75 was marked  21 for identification.)  22 Q. Let me show you what I am marking as  23 Plaintiffs' Exhibit 75, and I was just</p>
Page 215	Page 217
<p>1 the department with that work that you were  2 doing for the wage and class study?  3 A. Most of the personnel managers at the  4 facility, they played a very important  5 part. Whenever the consultants came to  6 their particular facility, they were  7 responsible for setting up meeting places  8 and making sure that everything was in  9 place.  10 Q. How about in the central office, did anyone  11 in the central office help you with the  12 work that you were doing in preparation  13 for --  14 A. I think, yes, Ms. Hubbard and Ms. Owens  15 both. They played part in terms of  16 compiling a lot of the information from the  17 questionnaires. And we were all kept aware  18 or kept abreast in terms of whatever  19 representations that the Segal Company  20 made.  21 Q. Now, in your departmental meetings that  22 y'all would have, staff meetings in the  23 central personnel office, monthly staff</p>	<p>1 wondering if you could identify for me --  2 identify Plaintiffs' Exhibit 75 for the  3 record for me.  4 A. It's an e-mail that I sent to Joan  5 obviously stating that I was going to be  6 going to the career fair at the Montgomery  7 Advertiser, that Mr. Ervin would not be in  8 the office and she would be in charge. If  9 there was any question, she could reach me  10 by cell phone.  11 Q. So at least on this date, May 7, 2007 -- or  12 for the day of May 8th, 2007 when you were  13 not in the office and Mr. Ervin was not in  14 the office, then you would put -- or you  15 did put Ms. Owens in charge of the office?  16 A. Yes.  17 Q. Let me do a little housekeeping here. Your  18 attorney produced some records for me  19 earlier today, and I just want to make sure  20 it's reflected in the record what's been  21 produced so we won't have any questions  22 about it later. And what I think I'm going  23 to do since I'm going to be putting these</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 218	Page 220
<p>1 in the record and I may need for you to</p> <p>2 identify these documents for me, so I'm</p> <p>3 just going to probably go ahead and attach</p> <p>4 them as an exhibit. But the first group of</p> <p>5 documents I have are Bates stamped ADMH</p> <p>6 01-03-00325 through ADMH 01-03-00340. And</p> <p>7 I'm going to mark those as Plaintiffs'</p> <p>8 Exhibit 76. And if you will -- and these</p> <p>9 were given to me as a group, so I'm just</p> <p>10 going to keep them as a group. And I'm</p> <p>11 going to show you Plaintiffs' Exhibit 76</p> <p>12 and have you identify for me what those</p> <p>13 documents are.</p> <p>14 (Plaintiffs' Exhibit 76 was marked</p> <p>15 for identification.)</p> <p>16 A. Well, the first sheet is a checklist that's</p> <p>17 used to make sure that the necessary</p> <p>18 paperwork has been completed when a person</p> <p>19 is appointed to a position or when a person</p> <p>20 receives a promotion to a position.</p> <p>21 Q. And can you tell me the Bates stamp number</p> <p>22 for that sheet so we'll know specifically</p> <p>23 what you're looking at? Should be in the</p>	<p>1 A. Well, obviously. It has my name on it.</p> <p>2 Supervisor, Henry Ervin. It says promotion</p> <p>3 clearly March the 4th, 2006.</p> <p>4 Q. And that would have been the same time</p> <p>5 frame that you --</p> <p>6 A. That's correct.</p> <p>7 Q. And these initials here, does it just</p> <p>8 reflect where the personnel office made</p> <p>9 sure that certain personnel records were</p> <p>10 completed?</p> <p>11 A. That's correct.</p> <p>12 Q. Kind of like when you start a new job</p> <p>13 you've got to complete certain tax forms</p> <p>14 and paperwork?</p> <p>15 A. Exactly.</p> <p>16 Q. And then the next document appears to be a</p> <p>17 certificate of attendance?</p> <p>18 A. Certificate of attendance and completion of</p> <p>19 the 2007 human resources conference in</p> <p>20 January '07.</p> <p>21 Q. And that's last four digits ending -- or</p> <p>22 five digits ending 00326.</p> <p>23 And then 00327 again is a -- is that a</p>
Page 219	Page 221
<p>1 bottom right-hand corner.</p> <p>2 A. ADM you mean? This number?</p> <p>3 Q. Yes, ma'am.</p> <p>4 MR. NIX: Of the sequence you</p> <p>5 stated it's 325.</p> <p>6 A. Yeah. You stated that earlier. ADMH</p> <p>7 01-03-000325.</p> <p>8 Q. Thank you. And the only reason I'm asking</p> <p>9 you to be that detailed is so -- when we're</p> <p>10 done today all I will have of our</p> <p>11 deposition is the record she's preparing.</p> <p>12 And that way I can follow exactly what</p> <p>13 you're looking at from the deposition</p> <p>14 transcript our court reporter is</p> <p>15 preparing.</p> <p>16 A. There are initials on here. Do you want me</p> <p>17 to tell you who the initials are?</p> <p>18 MR. NIX: Just wait for him to ask</p> <p>19 you a question.</p> <p>20 Q. Can I see that? I'll look at it with you</p> <p>21 since we only have one copy. This is an</p> <p>22 employee checklist for -- would this have</p> <p>23 been for your promotion?</p>	<p>1 certificate of attendance?</p> <p>2 A. Yes, it is. State personnel training,</p> <p>3 interview and selection, May of 2006.</p> <p>4 Q. What about document 00328, what is that?</p> <p>5 A. It's a checklist of the probationary</p> <p>6 increase received effective September the</p> <p>7 16th of '06.</p> <p>8 Q. So that would have been when your six-month</p> <p>9 probationary period expired?</p> <p>10 A. That's correct.</p> <p>11 Q. And then document 00329, what is that?</p> <p>12 A. It's the standard letter that each person</p> <p>13 receives once they complete successful</p> <p>14 completion of their working task</p> <p>15 probationary period. A letter written to</p> <p>16 me signed by Mr. Ervin.</p> <p>17 Q. Just telling you that you had completed</p> <p>18 your probation?</p> <p>19 A. Completed the probationary period.</p> <p>20 Q. Successfully?</p> <p>21 A. Yes.</p> <p>22 Q. Which means you get to keep your job?</p> <p>23 A. That's it.</p>



Deposition of Marilyn B. Benson

June 24, 2008

Page 222	Page 224
<p>1 Q. Next is 00330. What is that document?</p> <p>2 A. That's a copy of the 108.</p> <p>3 Q. What is a 108?</p> <p>4 A. A 108 is a form that has to be done to</p> <p>5 enter the information into the GHRS system,</p> <p>6 whether it's a person's promotion or a</p> <p>7 person being promoted to a particular</p> <p>8 position.</p> <p>9 Q. Was that copy for your appointment or your</p> <p>10 end of probation?</p> <p>11 A. This is the probation. It appears to be</p> <p>12 the probationary raise.</p> <p>13 Q. And then the next document is 00331. What</p> <p>14 is that?</p> <p>15 A. This is the appointment into the class as</p> <p>16 the assistant departmental personnel</p> <p>17 director.</p> <p>18 Q. That's just a computer file, I guess?</p> <p>19 A. Yes. Effective March the 4th of '06. This</p> <p>20 information had to be entered into the</p> <p>21 computer.</p> <p>22 Q. That wouldn't have been entered on your</p> <p>23 computer. That would be on someone</p>	<p>1 complete a Form 40. However, there are</p> <p>2 many cases when Form 40s are not always</p> <p>3 completed as they should be. Whenever</p> <p>4 there's a change in job duties and</p> <p>5 responsibilities, the Form 40s are supposed</p> <p>6 to be updated or revised to reflect</p> <p>7 whatever the changes may be. Now, they may</p> <p>8 or may not always do that. That's one of</p> <p>9 the things that personnel tried to get</p> <p>10 supervisors to get individuals to do.</p> <p>11 Q. And who is responsible for ensuring that</p> <p>12 Form 40s are completed for central</p> <p>13 personnel office employees?</p> <p>14 A. If I remember correctly, I know that the</p> <p>15 time that Bebe Bledsoe was in our office,</p> <p>16 that's one of the things that she, for lack</p> <p>17 of a better term, cracked her whip to try</p> <p>18 to encourage people to complete Form 40s.</p> <p>19 She kept a file, you know, updated Form</p> <p>20 40s.</p> <p>21 Q. Is it ultimately Mr. Ervin's responsibility</p> <p>22 to ensure that every employee in the</p> <p>23 central personnel office has a current Form</p>
Page 223	Page 225
<p>1 else's --</p> <p>2 A. No. Into the GHRS system.</p> <p>3 Q. Which is the system maintained by state</p> <p>4 personnel?</p> <p>5 A. Government human resource system that's</p> <p>6 maintained by state personnel.</p> <p>7 Q. Okay. The next document is 00332. What is</p> <p>8 that?</p> <p>9 A. It's just a change of address reflecting my</p> <p>10 current address.</p> <p>11 Q. Then we have 00333?</p> <p>12 A. A Form 40.</p> <p>13 Q. And is that for your present job?</p> <p>14 A. Yes, it is. This is the Form 40 that was</p> <p>15 completed when I first was appointed to the</p> <p>16 position. There's a date of June the 1st</p> <p>17 of '06.</p> <p>18 Q. And that date is contained on document</p> <p>19 Bates stamp 00336; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, can you explain what a Form 40 is?</p> <p>22 A. A Form 40 is a position classification</p> <p>23 questionnaire. Everyone is supposed to</p>	<p>1 40 on file?</p> <p>2 A. As the HR director, yes, I would assume so.</p> <p>3 Q. What's our next form there after that?</p> <p>4 A. It's another Form 40.</p> <p>5 Q. And that starts on page 00337?</p> <p>6 A. Correct.</p> <p>7 Q. And it runs to what page?</p> <p>8 A. 00340.</p> <p>9 Q. And is that the same Form 40 that we just</p> <p>10 looked at or a different one?</p> <p>11 A. It's different in the fact that it is</p> <p>12 revised with the most recent information to</p> <p>13 reflect the individuals that I currently</p> <p>14 supervise. This was done after the</p> <p>15 reorganization.</p> <p>16 Q. So that would have been done after November</p> <p>17 2007?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Very good. That would be all from</p> <p>20 that group of documents; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Now, were these documents obtained from --</p> <p>23 Were any of these documents obtained from</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 226

1 your computer?

2 A. No, not that I know of.

3 Q. Do you know where they would have been kept

4 or retrieved from?

5 A. Probably the file, personnel file. Most

6 likely the personnel file.

7 (Plaintiffs' Exhibit 77 was marked

8 for identification.)

9 Q. Next in the second batch of documents

10 produced they start with ADMH 08-00006 and

11 go sequentially to 08-00013. And I have

12 marked this composite exhibit as

13 Plaintiffs' Exhibit 77. And it looks like

14 the top two pages, 00006, 00007 and 00008

15 have already been marked as an exhibit

16 earlier today and that being the

17 announcement log.

18 A. Yes.

19 Q. Because I do identify the handwriting that

20 you identified as not being yours.

21 A. That's correct.

22 Q. Next is 00009. And that appears to be an

23 e-mail. Can you identify that e-mail for

Page 227

1 me?

2 A. It says see attached ad as per Henry's

3 request. This was sent to Betty Beck at

4 Partlow, cc'd to Mr. Ervin. It was an

5 advertisement for the assistant personnel

6 director position.

7 Q. And is the advertisement the document

8 that's been marked 00010?

9 A. Yes.

10 Q. Where would that ad have been circulated or

11 run?

12 A. It was sent to Mike Mathis as the personnel

13 director -- well, forwarded to Betty Beck.

14 Mike Mathis was responsible for managing

15 the position.

16 Q. And is that the ad -- or is that how the ad

17 would have appeared in, for example,

18 newspaper?

19 A. Yes.

20 Q. And next document 00011 through 00013

21 appear to be announce -- a list of where

22 the position of Departmental Assistant

23 Personnel Manager was announced?

Page 228

1 A. That's correct.

2 Q. And I think that's been maybe marked as an

3 exhibit before too.

4 This next document, ADMH 08-00014, came

5 with what I think we've already marked as

6 Plaintiffs' Exhibit 68. And I'm just going

7 to ask what I've handed you there as

8 document 08-00014 if you can identify that

9 document.

10 MR. NIX: Flynn, I think we've

11 talked about these before.

12 This is what we created in

13 order to go back --

14 MR. MOZINGO: Sure. And that's

15 why I'm asking her because I

16 expect her to say --

17 MR. NIX: She doesn't know what

18 that is.

19 A. I don't know what that is.

20 Q. Okay. I think we've tipped you off on the

21 answer there, haven't we?

22 A. No.

23 Q. And I assume would you have the same answer

Page 229

1 for document 08-00017?

2 A. That's correct.

3 (Plaintiffs' Exhibit 78 was marked

4 for identification.)

5 Q. All right. Now I'm going to mark as

6 Plaintiffs' Exhibit 78 the document that's

7 been produced to me Bates stamp ADMH

8 08-00018 through ADMH 08-00019 and ask you

9 if you can identify that document for me.

10 A. It's an announcement for -- a

11 reannouncement for the Departmental

12 Assistant Personnel Manager position.

13 Deadline for submission October the 28th,

14 2005.

15 Q. And since it's not on Department of Mental

16 Health letterhead, is that one of the

17 drafts of the announcement that you would

18 have prepared?

19 A. I believe it is.

20 Q. Ms. Benson, I think it's your testimony to

21 me today that the position of Departmental

22 Assistant Personnel Manager was not created

23 especially for you?

Deposition of Marilyn B. Benson

June 24, 2008

Page 230

1 A. That is correct.  
 2 Q. Are positions at the Department of Mental  
 3 Health ever especially created for anybody  
 4 in particular? Has that ever happened?  
 5 A. The process of open competition has always  
 6 been part of the process. The position is  
 7 announced. Applications are received. The  
 8 competitive process begins. There is never  
 9 a position whereas, you know, the regular  
 10 selection process is not followed.  
 11 Q. So preselection for positions is not  
 12 practiced --  
 13 A. No.  
 14 Q. -- at the Department of Mental Health?  
 15 A. No.  
 16 Q. And is preselection for positions  
 17 prohibited by the Department of Mental  
 18 Health?  
 19 A. I don't know of any law. I'm not aware of  
 20 anything that prohibits, but that's not a  
 21 practice.  
 22 Q. Well, is there a policy -- Does the  
 23 Department of Mental Health have the policy

Page 231

1 that it does not preselect people for  
 2 positions?  
 3 A. I'm not aware of any particular policy that  
 4 states as such. Again, as I said, it's not  
 5 a practice for our department to do that.  
 6 MR. NIX: While you're looking at  
 7 that, Flynn, you've already  
 8 marked this separately, but  
 9 another document we provided  
 10 you today was ADMH 08-00015.  
 11 MR. MOZINGO: And I think that's  
 12 what's been marked as  
 13 Plaintiffs' Exhibit 68.  
 14 MR. NIX: I just want to make sure  
 15 that the record was clear that  
 16 we had given it to you.  
 17 MR. MOZINGO: Yeah. And I put  
 18 that in because it was  
 19 attached to one of those cover  
 20 sheets that she couldn't  
 21 identify.  
 22 MR. NIX: That's fine.  
 23 Q. Ms. Benson, have you ever individually

Page 232

1 recruited any doctors or nurses to work at  
 2 the Department of Mental Health while you  
 3 had been employed there?  
 4 A. Yes.  
 5 Q. You have?  
 6 A. Yes.  
 7 Q. And was that recruitment done through the  
 8 interview and selection process or with  
 9 some other method utilized to recruit  
 10 physicians and nurses?  
 11 A. We have recruited by utilizing various --  
 12 tapping into various journals, advertising,  
 13 recruiting, attending career fairs at, you  
 14 know, colleges and universities. As a  
 15 matter of fact, we have one today I was  
 16 supposed to attend, but because of this I  
 17 was not able to. It's a physician's career  
 18 day in Birmingham at the Double Tree. So  
 19 it could be either in journals,  
 20 publications. It could be in person  
 21 recruiting, also with the interview and  
 22 selection process. So it's a combination  
 23 of various means of recruiting.

Page 233

1 MR. NIX: I think you added nurses  
 2 to the -- I think you  
 3 originally asked the question  
 4 about doctors and then you  
 5 added doctors and you said  
 6 doctors and nurses on the  
 7 second part. I don't think it  
 8 really matters, but I just  
 9 wanted to point that out to  
 10 you.  
 11 MR. MOZINGO: Okay.  
 12 Q. Now, in the Department of Mental Health,  
 13 you would have access to other individuals'  
 14 personnel files; correct?  
 15 A. Correct.  
 16 Q. Working in central personnel office?  
 17 A. Everyone in personnel has access to  
 18 personnel files.  
 19 Q. Everyone including yourself and Mr. Ervin?  
 20 A. That's correct.  
 21 Q. Are there any current duties or  
 22 responsibilities in your job as  
 23 Departmental Assistant Personnel Manager

Page 234

1 that you believe either Ms. Owens or  
 2 Ms. Hubbard would be incapable of  
 3 performing?  
 4 A. Incapable of performing?  
 5 Q. Yes.  
 6 A. I hesitate to say that anyone is incapable  
 7 of performing any job duty or  
 8 responsibility if they're given the proper  
 9 training to do so. There are some  
 10 specialty areas, as I stated in earlier  
 11 testimony, that Ms. Hubbard, Ms. Owens and  
 12 I both specialized in. And I think with  
 13 appropriate training in education, then I  
 14 certainly could not say that they're  
 15 incapable of performing those duties.  
 16 Q. Well, what duties do you have currently as  
 17 Departmental Assistant Personnel Manager  
 18 that they would lack the appropriate  
 19 training to perform?  
 20 A. Well, one in particular I know would be the  
 21 wage and class research and coordinate  
 22 efforts regarding wage and classification  
 23 studies. Another one would be preparing

Page 235

1 the budget for personnel division,  
 2 supervisory training. Those are particular  
 3 areas that I know that I do have expertise  
 4 in. There again, as I stated earlier, I  
 5 don't want to say that they're incapable of  
 6 doing those duties, because if given the  
 7 proper training and education, I'm sure  
 8 they could fulfill those obligations.  
 9 Q. And when you say if given the proper  
 10 training and education, do you mean  
 11 on-the-job training?  
 12 A. It could be a combination of on-the-job  
 13 training. It also could be educational  
 14 opportunities going back and exploring  
 15 degrees, getting certification, whether  
 16 it's obtaining bachelor's degrees. And  
 17 I've always encouraged all of the people  
 18 that I supervise, I've encouraged them to  
 19 attend -- further their education. It's --  
 20 You know, it's very difficult to say that  
 21 someone in this day and time cannot be  
 22 afforded the opportunity to attend and  
 23 expand their educational horizons given the

Page 236

1 fact if you cannot go and sit in the  
 2 traditional classroom there are on-line  
 3 courses that you can attend. So there are  
 4 always opportunities available that would  
 5 present themselves, whether it's training  
 6 through state personnel, any training and  
 7 workshops that may present themselves. You  
 8 know, there's always -- there should always  
 9 be a quest for knowledge. And that's one  
 10 of the things that I've always encouraged  
 11 the people that I supervise. One in  
 12 particular I remember Becky Taylor, I've  
 13 always encouraged her to go back and get  
 14 her degree. My last conversation with her  
 15 she told me that she was back in school.  
 16 So, you know, I encourage everyone to  
 17 attend school to further their education as  
 18 much as they possibly can.  
 19 Q. You mentioned the supervisory training. I  
 20 think you may have been looking down at  
 21 Plaintiffs' Exhibit --  
 22 A. Number 8? Coordinate, supervisor training  
 23 for department --

Page 237

1 Q. Number 48.  
 2 A. Oh, I'm sorry.  
 3 Q. But you were looking at job duty number  
 4 eight?  
 5 A. Uh-huh (positive response).  
 6 Q. And that's coordinate supervisory training?  
 7 A. Uh-huh (positive response).  
 8 Q. What is supervisory training?  
 9 A. Well, I have done supervisory training in  
 10 the area of employee assistance training.  
 11 I've also done supervisory training in the  
 12 area of FES. And FES is factor evaluation  
 13 system. That's a method that the federal  
 14 government uses in conducting job audits.  
 15 That happens to be one of my area of  
 16 expertise in doing job audits for the  
 17 department. So I've done various types of  
 18 training with supervisors, teaching them  
 19 how to do.  
 20 Q. Teaching supervisors how to train?  
 21 A. Teaching supervisors how to do the FES  
 22 system. This in particular was done at  
 23 some of the community mental health



Page 238

centers. Even when we did the wage and classification study back in the eighties, we had to do supervisory training. There was performance appraisal training that I also had the responsibility of doing at the various mental health centers and universities as well.

Q. Are there any -- In the case of the Departmental Assistant Personnel Manager we saw where the job announcements that went out or the job notice that went out. Plaintiffs' Exhibit 52, in fact -- well, that's a draft. Let me find the actual one that went out. Plaintiffs' Exhibit 47 is a notice that actually went out. And it gives preferences. Preferences will be given to individuals with a master's degree and other experience.

A. Uh-huh (positive response).

Q. Are there any job announcements that you can recall that the department of -- that the central personnel office would have issued that contain preferences?

Page 239

A. Yes. Yes. That is a practice to put a preference on a job announcement. It does not limit you to what the qualifications say as they're typed here. But a preference will be given to individuals who may have either one of these particular --

Q. And when preferences are used, are they used to encourage certain individuals to apply or to discourage certain individuals from applying?

A. I'm not sure what you mean by that.

Q. Well, if you put a preference in a job such as what we have for Plaintiffs' Exhibit 47, do you think that preference would discourage people who do not have a master's degree from applying?

A. I think the mere fact that a bachelor's degree is stated as such, if you did not have a bachelor's degree perhaps you would be discouraged from applying.

Q. Well, if it says a preference is going to be given to a person with a master's degree, do you think that would discourage

Page 240

someone with a bachelor's from applying?

A. I'm sure it probably would if they did not have the master's degree.

Q. Mr. Ervin told us that effective, I think it's July 1st, he will be assuming his new job in Tuscaloosa. Are you aware of that?

A. That's correct. I'm aware of that.

Q. Will Mr. Ervin's current job of departmental personnel manager be vacant effective July 1?

A. Yes, it will be.

Q. Has a job announcement been prepared for that vacancy?

A. Not as of yet.

Q. Who would be responsible for preparing that announcement?

A. Most likely I will be.

Q. Have you been asked to prepare one yet?

A. Yes, I have.

Q. Have you prepared one yet?

A. Not as of yet. The initial paperwork has begun to fill the position.

Q. And you're preparing the job announcement?

Page 241

A. That's correct.

Q. What specifications are being used for that announcement?

A. It will be the master's degree without substitution.

Q. And who is preparing the specification?

A. The specifications have already been prepared.

Q. Who prepared them?

A. Segal.

Q. The Segal Group?

A. The Segal Group.

Q. Well, are you just adopting what they prepared, or were they specifically asked to prepare the specification?

A. They prepared specification for several of our exempt positions.

Q. Has the Segal specification been adopted by the Department of Mental Health?

A. Not in totality.

Q. Well, has the Segal specification for Mr. Ervin's position been adopted?

A. Yes, it has.



Deposition of Marilyn B. Benson

June 24, 2008

Page 242	Page 244
<p>1 Q. And who was it adopted by? Was it adopted 2 by the commissioner? 3 A. By the associate and the commissioner. 4 Q. Was it reviewed and approved by the job 5 evaluation committee? 6 A. No. 7 Q. And so the new specifications for 8 Mr. Ervin's job will require a master's 9 degree? 10 A. That is correct. 11 Q. Will it allow substitution? 12 A. No, it will not. As I stated earlier, it 13 will not. 14 Q. Now, Mr. Ervin is currently a Personnel 15 Manager IV; correct? 16 A. That's correct. 17 Q. Has an entirely new job been created for 18 this position, for the position he's 19 vacating? 20 A. A new classification? 21 MR. NIX: You mean the director? 22 Q. Right. Has a new job been created for the 23 position of director -- for personnel</p>	<p>1 Q. Have the job specifications for the 2 Personnel Manager IV been utilized in 3 preparing the announcement for the new 4 opening? 5 A. As I stated earlier, the announcement 6 hasn't been prepared. 7 Q. But the specifications have? 8 A. The specifications have. 9 Q. And those are the ones recommended by 10 Segal? 11 A. That is correct. 12 Q. And are they different from the 13 specifications for the Personnel Manager 14 IV? 15 A. Yes, they are. 16 Q. Do you know when the announcement for 17 Mr. Ervin's position will be made, the job 18 opening announcement? 19 A. I was told to announce the position as soon 20 as possible. So most likely within the 21 week it will be announced. 22 Q. Does the announcement of that position to 23 your knowledge in any way -- does the</p>
Page 243	Page 245
<p>1 manager director at the central personnel 2 office? 3 A. I want to make sure I'm understanding your 4 question now. 5 Q. And that's because there's the actual legal 6 title and the working title. His legal 7 title is Personnel Manager IV. 8 A. Right. 9 Q. But his working title is personnel 10 director? 11 A. The position that will be advertised is 12 director of human resources. 13 Q. But that's going to be the position that 14 he's vacating? 15 A. That's correct. 16 Q. And has director of human resources 17 position, has it been established? 18 A. The position is already in place. It's 19 just a matter of the changing of the name, 20 the title of the classification. 21 Q. Well, Mr. Ervin holds that current position 22 as a Personnel Manager IV? 23 A. IV.</p>	<p>1 timing of that announcement in any way 2 relate to this current lawsuit that's going 3 on? 4 MR. NIX: I object to the form. 5 A. I'm not sure I understand what you're 6 asking. 7 Q. When a position is being -- is open, do you 8 normally make the announcement of the job 9 opening before the position becomes open or 10 after it's open? 11 A. There are times when the position is 12 announced before the individual vacates the 13 position if that's what you're asking me. 14 Is that what you're asking me? 15 Q. Yes. That's what I'm asking. 16 A. Yes. Yes. 17 Q. And usually is the position announced 18 before the individual vacates? 19 A. It depends upon the type of the position. 20 Most of the higher level managerial 21 positions the announcement is usually done 22 before the individual vacates the position. 23 Q. Who will oversee the central personnel</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 246

1 office pending the filling of Mr. Ervin's  
 2 position?  
 3 A. The associate commissioner for  
 4 administration, Mr. David Bennett.  
 5 Q. That's Mr. Bennett. Okay.  
 6 A. Yes.  
 7 Q. Do you intend to apply for the position  
 8 being vacated by Mr. Ervin?  
 9 A. No, I do not.  
 10 Q. You do not. And why not?  
 11 A. My plate is already full, to be perfectly  
 12 honest with you. I have enough  
 13 responsibilities to handle at the present  
 14 time. And I will make every effort as  
 15 directed by my supervisor to assist with  
 16 the filling of the position.  
 17 Q. But you do not intend to apply?  
 18 A. No.  
 19 Q. Is there a possibility that you might  
 20 apply?  
 21 A. As I stated, I do not intend to apply.  
 22 Q. I know, but I'm asking because intentions  
 23 sometimes change. So that's why I'm asking

Page 247

1 is there a possibility that you might  
 2 apply?  
 3 A. No.  
 4 Q. Do you know -- As far as the announcement  
 5 for the position being vacated by  
 6 Mr. Ervin, do you know if that announcement  
 7 will be made on a statewide basis as it was  
 8 for the position of Departmental Assistant  
 9 Personnel Manager, or will it be made on a  
 10 more limited basis?  
 11 A. I was told to advertise as extensively as  
 12 possible. It may be statewide. It could  
 13 be national. The decision has not been  
 14 made as of yet.  
 15 Q. So it could be statewide. It could be  
 16 national. Could it be departmental?  
 17 A. I doubt it very seriously.  
 18 Q. But could it be?  
 19 A. I won't say not. Anything is possible.  
 20 That would not be my decision.  
 21 Q. Whose decision would that be?  
 22 A. Ultimately it would be the commissioner's  
 23 decision.

Page 248

1 Q. Commissioner Houston?  
 2 A. That's correct.  
 3 Q. When were the job specs for the position  
 4 being vacated by Mr. Ervin -- the Segal  
 5 recommended job specs, when were they  
 6 adopted by the commissioner?  
 7 A. As I stated earlier, all of them have not  
 8 been adopted. Only that particular one  
 9 given the criticality of filling the  
 10 position as quickly as possible.  
 11 Q. Right. And that was my question. When was  
 12 that particular spec adopted by the  
 13 commissioner?  
 14 A. The decision was made within this past  
 15 week.  
 16 Q. This past week?  
 17 A. That's correct.  
 18 MR. MOZINGO: Okay. I'm going to  
 19 review my notes. We'll take a  
 20 break now. We may be almost  
 21 done. Let me make sure I've  
 22 covered everything.  
 23 (Brief recess was taken.)

Page 249

1 Q. Ms. Benson, one thing I realize I didn't  
 2 ask you was your family members. You  
 3 identified your husband for me. I think  
 4 you told me y'all live in Alex City?  
 5 A. Alexander City.  
 6 Q. And how long have you lived up in Alexander  
 7 City?  
 8 A. We've been moved back -- That's my  
 9 hometown. This is the third year. Three  
 10 years.  
 11 Q. Prior to then you were living in  
 12 Montgomery?  
 13 A. Here in Montgomery.  
 14 Q. For over 20 years?  
 15 A. That's correct.  
 16 Q. Does your husband have any job -- or have a  
 17 job other than being a minister?  
 18 A. He's retired educator. He has, of course,  
 19 the ministry being the pastor of the  
 20 church. He does work part-time at one of  
 21 the nursing homes doing hair for the  
 22 clients there. He's a licensed  
 23 cosmetologist. In fact, he has a barber

Deposition of Marilyn B. Benson

June 24, 2008

Page 250	Page 252
<p>1 shop in Alex City.</p> <p>2 Q. What's the name of his barber shop?</p> <p>3 A. Lou's Beauty and Style Shop.</p> <p>4 Q. What's the address of that barber shop?</p> <p>5 A. 106 Calhoun Street, Alexander City.</p> <p>6 Q. And what nursing home does he work?</p> <p>7 A. Brown Nursing Home.</p> <p>8 Q. Where is Brown located?</p> <p>9 A. It's on -- I'm trying to think of the name</p> <p>10 of the street. I can't think of the name</p> <p>11 of the street.</p> <p>12 Q. Is it in Alex City or Montgomery?</p> <p>13 A. It's in Alexander City.</p> <p>14 Q. Does he work in any other nursing homes?</p> <p>15 A. No.</p> <p>16 Q. He's a retired educator you said?</p> <p>17 A. Yes, he is.</p> <p>18 Q. Who did he work with prior to retiring?</p> <p>19 A. Central Alabama Community College. He was</p> <p>20 a counselor there for over 30 years.</p> <p>21 Q. What kind of counselor?</p> <p>22 A. Academic counselor.</p> <p>23 Q. Did he do anything else other than serve as</p>	<p>1 A. Brother-in-law lives here in Montgomery.</p> <p>2 Q. What is his name?</p> <p>3 A. Henry Benson.</p> <p>4 Q. What does he do for a living?</p> <p>5 A. He works at Gunter Air Force Base. I'm not</p> <p>6 exactly sure what he does.</p> <p>7 Q. And is he married?</p> <p>8 A. No.</p> <p>9 Q. Has he been married?</p> <p>10 A. Yes. Divorced.</p> <p>11 Q. What was his former wife or wives' name?</p> <p>12 A. I don't even know her name. I can't</p> <p>13 remember.</p> <p>14 Q. Must have been a while ago?</p> <p>15 A. Well, yeah. It was a short-lived</p> <p>16 marriage. I'll put it that way.</p> <p>17 Q. And so other than your brother-in-law, is</p> <p>18 that the only family members you would</p> <p>19 have -- or family member you would have in</p> <p>20 Montgomery and surrounding area?</p> <p>21 A. Yes. That's correct.</p> <p>22 Q. Is your husband from Montgomery?</p> <p>23 A. No. He's originally from Mobile.</p>
Page 251	Page 253
<p>1 academic counselor?</p> <p>2 A. No. Well, I take that back. He was</p> <p>3 assistant basketball coach for a while.</p> <p>4 Q. And does he have any other ministries other</p> <p>5 than your church you told us about earlier?</p> <p>6 A. No.</p> <p>7 Q. Do you have any adult children living in</p> <p>8 the Montgomery or central Alabama area?</p> <p>9 A. No.</p> <p>10 Q. Do you have adult children?</p> <p>11 A. I have one daughter.</p> <p>12 Q. One daughter?</p> <p>13 A. She's 23.</p> <p>14 Q. Where does she live?</p> <p>15 A. In Birmingham.</p> <p>16 Q. What is her name?</p> <p>17 A. April Benson.</p> <p>18 Q. What does she do in Birmingham?</p> <p>19 A. She's a financial analyst for American</p> <p>20 General.</p> <p>21 Q. Do you have any family members who live in</p> <p>22 Montgomery or central Alabama besides your</p> <p>23 husband?</p>	<p>1 Q. And you're originally from Alex City?</p> <p>2 A. That's correct.</p> <p>3 Q. Have you ever used your phone or computer</p> <p>4 for personal use -- your phone or computer</p> <p>5 at your office?</p> <p>6 A. Phone or computer?</p> <p>7 Q. Uh-huh (positive response).</p> <p>8 A. Well, I'm sure everybody has used their</p> <p>9 phone. I've called my husband, you know,</p> <p>10 returned calls back.</p> <p>11 Q. What about your computer, have you ever</p> <p>12 used it for personal use?</p> <p>13 A. I'm sure I may have, yes, at one time or</p> <p>14 another.</p> <p>15 Q. You told me Mr. Bennett will be responsible</p> <p>16 for the central personnel office until</p> <p>17 Mr. Ervin's position is filled.</p> <p>18 A. That's correct.</p> <p>19 Q. I'm wondering why will you not be</p> <p>20 responsible since you are the Assistant</p> <p>21 Department Personnel Manager?</p> <p>22 A. I did not make that decision. That was</p> <p>23 Mr. Bennett's decision.</p>

Deposition of Marilyn B. Benson

June 24, 2008

Page 254

1 Q. Has he told you why he made that decision?  
 2 A. No, he has not.  
 3 Q. Ms. Benson, was there an occasion where a  
 4 personnel file for Lynn Hubbard was  
 5 destroyed in a house fire that you had?  
 6 A. Personnel file for Lynn Hubbard?  
 7 Q. Uh-huh (positive response).  
 8 A. I had a fire. There was a fire at my home.  
 9 Q. Your home in Montgomery?  
 10 A. Yes. My home here in Montgomery. It was  
 11 in 2002. And we lost pretty much  
 12 everything that we had. I do remember  
 13 taking some files home. In fact, I was  
 14 grading some applications. That's the only  
 15 time that I remember the possibility of  
 16 losing some applications. But I don't  
 17 recall Ms. Hubbard's file being in there.  
 18 Q. But there were some personnel files that  
 19 were destroyed in a fire at your home?  
 20 MR. NIX: She said applications.  
 21 A. I didn't say files. I remember there being  
 22 a file that I took home with applications  
 23 where people had applied for a particular

Page 255

1 position. And those applications were  
 2 destroyed.  
 3 Q. What job position was that for?  
 4 A. I don't remember the job. I don't even  
 5 remember.  
 6 Q. Okay. Other than the application, were  
 7 there any other mental health personnel  
 8 office records --  
 9 A. No.  
 10 Q. -- that were destroyed?  
 11 A. None that I know of.  
 12 Q. And you don't recall any personnel record  
 13 of Lynn Hubbard that were destroyed in the  
 14 fire?  
 15 A. None that I know of.  
 16 Q. Okay. And I just want to make absolutely  
 17 clear. Other than your brother-in-law, you  
 18 have no family that reside in Montgomery or  
 19 the surrounding area?  
 20 A. No, I do not.  
 21 Q. Any close friends that reside in Montgomery  
 22 or the surrounding area?  
 23 A. Well, I have several friends in the

Page 256

1 Montgomery area. I have people at the  
 2 former church that I attend here in  
 3 Montgomery. I can't name all of their  
 4 names. You know, we still communicate.  
 5 Q. Do they still attend --  
 6 A. Some of my church members are here in the  
 7 Montgomery area and they commute from  
 8 Montgomery to Alex City to attend church.  
 9 So there are plenty of acquaintances in the  
 10 Montgomery area.  
 11 MR. MOZINGO: All right. That's  
 12 all I have. Thank you very  
 13 much.  
 14 (Deposition was concluded at  
 15 approximately 5:10 p.m.)

\*\*\*\*\*

FURTHER DEPONENT SAITH NOT

\*\*\*\*\*

Page 257

1 REPORTER'S CERTIFICATE  
 2 STATE OF ALABAMA:  
 3 MONTGOMERY COUNTY:  
 4 I, Lyn Daugherty, Certified Shorthand  
 5 Reporter and Commissioner for the State of Alabama  
 6 at Large, do hereby certify that I reported the  
 7 deposition of:  
 8 MARILYN B. BENSON  
 9 who was duly sworn by me to speak the truth, the  
 10 whole truth and nothing but the truth, in the  
 11 matter of:  
 12 JOAN FAULK OWENS and KAREN LYNN  
 13 HUBBARD,  
 14 Plaintiffs,  
 15 vs.  
 16 STATE OF ALABAMA DEPARTMENT OF MENTAL  
 17 HEALTH AND MENTAL RETARDATION, et  
 18 al.,  
 19 Defendants.  
 20 IN THE UNITED STATES DISTRICT COURT  
 21 FOR THE MIDDLE DISTRICT OF ALABAMA  
 22 NORTHERN DIVISION  
 23 Civil Action No. 2:07-cv-650-WHA

Page 258

1 on Tuesday, June 24th, 2008.

2 The foregoing 257 computer-printed pages  
3 contain a true and correct transcript of the  
4 examination of said witness by counsel for the  
5 parties set out herein. The reading and signing is  
6 hereby waived.

7 I further certify that I am neither of kin  
8 nor of counsel to the parties to said cause nor in  
9 any manner interested in the results thereof.

10 This 7th day of July 2008.

11  
12  
13  
14 Lyn Daugherty, ACCR #66  
15 Expiration Date: 9-30-2008  
16 Certified Court Reporter  
17 And Commissioner for the  
18 State of Alabama at Large  
19  
20  
21  
22  
23



In the United States District Court  
State of For the Middle District of Alabama  
County of Northern Division

JOAN FAULK OWENS AND KAREN )  
LYNN HUBBARD, )  
PLAINTIFFS, )  
versus ) 2:07-cv-650-WHA  
STATE OF ALABAMA DEPARTMENT OF )  
MENTAL HEALTH AND MENTAL )  
RETARDATION, ET AL, )  
DEFENDANTS.)

The Deposition of Otha Dillihay, Sr.

Hampton Inn  
822 Gervais Street  
Columbia, South Carolina  
Saturday, June 7, 2008  
9:45 a.m. - 5:45 p.m.

In behalf of the attorneys for the Plaintiffs, the deposition of the above-named witness was taken before me, Judith H. Hayes, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to re-notice to take deposition duces tecum in the above-entitled cause pending in the above-named court.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

**Appearing in behalf of the Plaintiffs:**

Melton, Espy & Williams, P.C.  
P.O. Drawer 5130  
Montgomery, Alabama 36103-5130

By: J. Flynn Mozingo, Esq.

**Appearing in behalf of the Defendants:**

Nix, Holtsford, Gilliland, Higgins & Hitson, P.C.  
P.O. Box 4128  
Montgomery, Alabama 36103-4128

By: H.E. Nix, Jr., Esq.

**Appearing in behalf of the Defendant Alabama Department of Mental Health/Mental Retardation:**

Courtney W. Tarver, Esq.  
Bureau of Legal Services ADMH/MR  
RSA Union Building, 100 North Union Street  
Montgomery, Alabama 36130

Also Present: Joan Faulk Owens  
Karen Lynn Hubbard

INDEX

Examination: Page No.:  
By Mr. Mozingo 5

PLAINTIFFS' EXHIBITS

<u>Exhibit No.:</u>	<u>Page Reference:</u>
Exhibit No. 1 (Re-notice to take Deposition duces tecum)	6
Exhibit No. 2 (Resume)	8
Exhibit No. 3 (Center for HealthCare Governance - Speaker)	35
Exhibit No. 4 (Photo of Otha Dillihay)	47
Exhibit No. 5 (Columbia Businessmen to Fight AIDS in Africa)	57
Exhibit No. 6 (Chapter Members - Kappa Alpha Psi)	59
Exhibit No. 7 (Richland One Departments)	86
Exhibit No. 8 (Application for Employment)	96
Exhibit No. 9 (Central Office Outlook)	105
Exhibit No. 10 (Preappraisal)	109
Exhibit No. 11 (7/22/05 letter from John Houston)	112
Exhibit No. 12 (Preappraisal)	121
Exhibit No. 13 (1/18/07 memo to John Houston)	124
Exhibit No. 14 (Responses to Plaintiffs' First Consolidated Discovery)	198
Exhibit No. 15 (Title: Equal Employment Opportunity)	161
Exhibit No. 16 (Title: Nepotism)	164
Exhibit No. 17 (Title: Job Evaluation Committee)	166
Exhibit No. 18 (Request to Fill Exempt Position on Staffing Plan)	167
Exhibit No. 19 (Departmental Assistant Personnel Manager)	153
Exhibit No. 20 (Announcement of Intent to Fill a Non-Merit Position)	159
Exhibit No. 21 (Minutes of Job Evaluation Committee Meeting 10/15/04)	254
Exhibit No. 22 (Minutes of Job Evaluation Committee Meeting 2/24/05)	256
Exhibit No. 23 (3/15/05 Memorandum from Henry E. Ervin)	263
Exhibit No. 24 (Personnel Manager III)	264
Exhibit No. 25 (Minutes of the Job Evaluation Committee 8/10/05)	275

COLUMBIA TRANSCRIPTS, INC.  
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Exhibit No.: (Continued) Page Reference:

Exhibit No. 26 (Staff Development Specialist II)	277
Exhibit No. 27 (Minutes of the Job Evaluation Committee 7/22/05)	277
Exhibit No. 28 (Minutes of the Job Evaluation Committee 1/12/06)	278
Exhibit No. 29 (Administrator V)	279
Exhibit No. 30 (Minutes of the Job Evaluation Committee Meeting 6/26/06)	282
Exhibit No. 31 (Personnel Specialist II)	284
Exhibit No. 32 (Minutes of the Personnel Manager's Meeting 7/18/06)	285
Exhibit No. 33 (Minutes of the Job Evaluation Committee 2/14/07)	286
Exhibit No. 34 (Proposal to Conduct a Wage and Classification Study)	249
Exhibit No. 35 (1/18/06 letter from Courtney Tarver to U.S. E.E.O.C.)	189
Exhibit No. 36 (5/31/06 letter from Courtney Tarver to U.S. E.E.O.C.)	196
Exhibit No. 37 (E.E.O.C. Determination)	197
Exhibit No. 38 (National Forum for Black Public Administrators - History)	49
Exhibit No. 39 (National Forum for Black Public Administrators - Who We Are)	50
Exhibit No. 40 (Richland One Administration)	87
Exhibit No. 41 (6/14/05 Memorandum to John Houston from Henry E. Ervin re Dept. Asst. Personnel Manager)	133
Exhibit No. 42 (Re-Announcement of Intent to Fill a Non-Merit Position)	160

**Plaintiffs'  
Exhibit 110**

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1 This deposition is taken pursuant to the  
2 Federal Rules of Civil Procedure; that all objections,  
3 except as to the form of the question, are reserved  
4 until time of trial.

5 It is further stipulated among counsel and  
6 the witness that the witness will not waive reading  
7 and signing of the deposition.

8  
9 THEREUPON,

10  
11 Otha Dillihay, Sr.  
12 being first duly sworn to tell the truth, the whole truth,  
13 and nothing but the truth, as hereinafter certified,  
14 testified as follows:

15  
16 **Examination**

17 BY MR. MOZINGO:

18 Q. Would you please state your full name for the  
19 record?

20 A. Otha Roosevelt Dillihay, Sr.

21 Q. Mr. Dillihay, my name is Flynn Mozingo, and I  
22 represent the plaintiffs Joan Faulk Owens and Karen Lynn  
23 Hubbard in this lawsuit that has been filed against you.  
24 And you are the Otha Dillihay that is the defendant in this  
25 lawsuit pending in the U.S. District Court for the Middle

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6

1 District of Alabama, is that correct?

2 A. That's correct.

3 (Plaintiffs' Exhibit No. 1 was  
4 pre-marked for identification.)

5 Q. Let me show you what's been marked as Plaintiffs'  
6 Exhibit One. That is a notice for your deposition. Have  
7 you seen that before?

8 MR. NIX: While he is looking at that, Flynn,  
9 just for the record, you and I had a conversation about the  
10 document request, and of course you indicated it was the  
11 same document request that we had previously responded to,  
12 so we did not respond to any documents. We simply assert  
13 the same objections we asserted in the other request and  
14 all that kind of things.

15 MR. MOZINGO: Right.

16 MR. NIX: We assert those now.

17 A. Yes, sir. I have seen it.

18 Q. You have seen that request before?

19 A. Yes.

20 Q. Your deposition was noticed for 9:30 a.m. Eastern  
21 Standard Time and you arrived at 9:45 Eastern Standard  
22 Time, is that correct?

23 A. I'm not sure.

24 MR. NIX: That's about right.

25 A. Sounds good.

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1 Q. Mr. Dillihay, I had originally requested that you  
2 come to Alabama for your deposition but was told that you  
3 would not come to Alabama, is that true?

4 MR. NIX: Let me just object to that. I don't  
5 know that that is a legitimate inquiry. He's a resident --  
6 Mr. Dillihay is a resident citizen of the State of South  
7 Carolina.

8 MR. MOZINGO: That's right. That's fine.

9 MR. NIX: And whether he agreed to come to  
10 Alabama or agreed to be deposed in South Carolina, which he  
11 has done, I think is not a legitimate inquiry in this case  
12 at all.

13 MR. MOZINGO: I think it is, because if we were  
14 to prevail and obtain relief, then we are entitled to cost  
15 and fees or could petition for cost and fees under Section  
16 1988, so I think to establish that we have incurred this  
17 cost today because we have had to come here to take his  
18 deposition it is a relevant inquiry.

19 MR. NIX: I just object to the question.

20 MR. MOZINGO: Your objection is noted.

21 BY MR. MOZINGO:

22 Q. Is it true, Mr. Dillihay, that you refused to  
23 come to Alabama for your deposition?

24 MR. NIX: I will object to the word refuse, but  
25 anyway, go ahead.

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8

1 A. I was unable to come to Alabama.

2 Q. You were unable to come to Alabama for your  
3 deposition?

4 A. Yes.

5 Q. I had also requested that this deposition be  
6 moved up until 8 a.m. Eastern time so that I could leave  
7 tonight and not have to stay an extra night in Columbia,  
8 and it's my understanding that you are either unable or  
9 refused to be available at 8 a.m. Eastern, is that correct?

10 MR. NIX: I object again to the question, but he  
11 can answer.

12 A. I was unable to be here any earlier.

13 Q. You were unable to be here any earlier?

14 A. Yes.

15 Q. Mr. Dillihay, when you give an answer could you  
16 please verbalize it and a little bit loudly so our court  
17 reporter here can make sure she records your answer?

18 A. Okay.

19 Q. We want to make sure that she records the answer  
20 that you give, and also if you would please verbalize your  
21 answer because she cannot record uh-huh, that type of  
22 thing. Not that you have done that yet, but just to give  
23 you advance notice.

24 (Plaintiffs' Exhibit No. 2 was  
25 pre-marked for identification.)

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1 Let me show you what's been marked as  
2 Plaintiffs' Exhibit Two, Mr. Dillihay. That is a resume  
3 for you that was in the records that were produced to me by  
4 your attorney. Have you seen that document before?

5 A. Yes.

6 Q. By the way, before I ask you about this resume,  
7 there was one other thing I wanted to ask you. Your lawyer  
8 stated in response to Plaintiffs' Number One that you had  
9 already produced the documents requested in this.

10 MR. NIX: I said we had.

11 MR. MOZINGO: Well, he has. You are his agent.

12 MR. NIX: Well, Mr. Dillihay had no documents.  
13 But we did produce documents pursuant to your request that  
14 we did have. But anyway, go ahead. We also made  
15 objections to those which---

16 MR. MOZINGO: Which are noted.

17 MR. NIX: Of course we have noted again here.

18 BY MR. MOZINGO:

19 Q. Mr. Dillihay, you have no documents in your  
20 possession that are responsive to any of the requests in  
21 this Deposition Notice Duces Tecum?

22 A. No, sir.

23 Q. And you had no documents in your possession that  
24 were responsive to the request for production of documents  
25 previously propounded to you?

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10

1 A. No, sir.

2 MR. NIX: Flynn, let me just say this. I did not  
3 go through with Mr. Dillihay item for item those requests,  
4 so that if any of them are in any way different, which I  
5 understand they are not, then I haven't gone through them  
6 with him. But what I assumed, based on our conversation,  
7 was that the document request and the deposition were the  
8 same document requests that we previously responded to.

9 MR. MOZINGO: And they are.

10 MR. NIX: So I did not go through those word for  
11 word with him this time, although I have done that  
12 previously.

13 BY MR. MOZINGO:

14 Q. Right. And that is what I want to make sure the  
15 record is clear, Mr. Dillihay. I did receive documents  
16 from your attorney in response to requests for production  
17 of documents that I have propounded to you, and I am trying  
18 to clarify whether the documents produced were documents  
19 from your personal files that you currently have or  
20 documents that you had possession of or whether they were  
21 documents in the possession of your former employer, the  
22 Alabama State Department of Mental Health and Mental  
23 Retardation. So let's make sure we have that clear now.

24 The documents that have been produced to me  
25 by your attorney in response to requests propounded to you,

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803/356-1990  
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1 none of those documents that were produced came out of your  
2 personal possession, is that correct?

3 MR. NIX: Do you remember whether you sent us a  
4 new resume or not? I don't remember.

5 WITNESS: I'm not sure. I mean this is the  
6 resume that would have been submitted when---

7 MR. NIX: We had it in your file, but Brandy did  
8 most of that type of footwork, so I don't know. But  
9 anyway, go ahead.

10 BY MR. MOZINGO:

11 Q. I represent to you that I believe this is the  
12 resume you submitted to the Department of Mental Health for  
13 employment. I think we are going to establish in a few  
14 minutes that you are presently working with an employer  
15 other than the Palmetto Health Alliance.

16 A. Certainly.

17 Q. So we'll establish that in a minute, but let me  
18 make sure that I'm clear and the record is clear that any  
19 of the documents that were produced to me on your behalf,  
20 to your knowledge all of those documents would have come  
21 from the Alabama Department of Mental Health?

22 A. I really don't know where it came from. I mean.

23 Q. But you have no documents of your own that you  
24 have produced in response to my requests for production of  
25 documents?

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12

1 A. None that I am aware of.

2 Q. What documents do you have in front of you there  
3 other than Plaintiffs' Two?

4 A. I have a copy of the Notice of Taking the  
5 Deposition. And I have a copy of the Defendant's Response  
6 to Discovery.

7 Q. May I see that one second, please.

8 A. (Handing document.)

9 Q. You have a copy of Defendant Otha Dillihay's  
10 Response to Plaintiffs' First Consolidated Discovery, is  
11 that correct?

12 A. Yes.

13 Q. That's the document in front of you right now?

14 A. Yes.

15 Q. Let me refer you to Plaintiffs' Two, your resume.  
16 It is my understanding that Plaintiffs' Exhibit Two was the  
17 resume that you submitted for employment with the Alabama  
18 Department of Mental Health, is that correct?

19 A. I believe that is correct.

20 Q. Does Plaintiffs' Exhibit Two truly and accurately  
21 reflect your work experience, training, education up to the  
22 date you applied for employment with the Alabama Department  
23 of Mental Health?

24 A. To the best of my knowledge it is.

25 Q. According to Plaintiffs' Exhibit Two, you hold a

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1 Masters Degree in Business Administration from Webster  
2 University, is that correct?  
3 A. Yes. In business, yes.  
4 Q. And you hold a Bachelor of Science degree in  
5 Business Administration from South Carolina State  
6 University?  
7 A. That's correct.  
8 Q. And you attended the University of South Carolina  
9 School of Law, is that correct?  
10 A. That's correct.  
11 Q. Did you graduate from that school?  
12 A. No.  
13 Q. Why did you not graduate?  
14 A. I hated the law was part of it and I sucked at  
15 it. I wasn't a very good student. It wasn't for me.  
16 Q. Did you voluntarily leave the School of Law or  
17 were you asked to leave or expelled?  
18 A. I was asked to leave.  
19 Q. You were asked to leave?  
20 A. Right.  
21 Q. What were the grounds for them asking you to  
22 leave to your knowledge?  
23 A. Poor student.  
24 Q. Did you flunk out?  
25 A. Yes.

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14

1 Q. Did you flunk out your second year of law school?  
2 A. Yes. It was my second year there.  
3 Q. Prior to attending the University of South  
4 Carolina School of Law, you attended Morehouse College, is  
5 that correct?  
6 A. Yes.  
7 Q. Did you obtain a degree from Morehouse College?  
8 A. No.  
9 Q. Moving on to your work experience, was your first  
10 job serving as Project Coordinator with the G. Werber Bryan  
11 Psychiatric Hospital in Columbia, South Carolina?  
12 A. My first job?  
13 Q. Correct.  
14 A. No.  
15 Q. What jobs did you have before that?  
16 A. Oh, my goodness. From where do you want to  
17 start?  
18 Q. Let me ask it this way. According to your  
19 resume, listed under recent work experience, that is the  
20 first job that is listed--  
21 A. Okay.  
22 Q. --in your resume, right?  
23 A. Okay.  
24 Q. So you did have working experience prior to  
25 serving as Project Coordinator at the Werber Bryan

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1 Psychiatric Hospital?  
2 A. Oh, yes.  
3 Q. Was that experience in what I might call working  
4 in an area in which you had obtained a degree or was that  
5 just working jobs putting yourself through school like so  
6 many of us do?  
7 A. It was a combination.  
8 Q. What was the first job you had after graduating  
9 from South Carolina State University?  
10 A. I went to Bryan Hospital.  
11 Q. Pardon?  
12 A. I believe it was Bryan Hospital.  
13 Q. What did you do there?  
14 A. I was Project Developer.  
15 Q. Project Coordinator?  
16 A. Coordinator.  
17 Q. Is that the job that is listed at the bottom of  
18 page two of your resume?  
19 A. That's correct.  
20 Q. I can read your resume, but could you explain to  
21 me what you did?  
22 A. At Bryan?  
23 Q. Correct.  
24 A. Generally I could. We developed Continuity of  
25 Care Programs for the acute care hospitals.

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16

1 Q. What is that, a Continuity of Care Program?  
2 A. The Department of Mental Health here was in the  
3 process of deinstitutionalizing its patients. We have a  
4 mental health structure in this state that has county  
5 authorities in each county, and my job was to coordinate  
6 the continuity of care as patients moved from the community  
7 into the hospital and back. To organize that, give the  
8 department, and particularly our flagship hospital, a plan  
9 that they could use to do that more effectively.  
10 Q. And can you define for the jury what is  
11 continuity of care?  
12 A. Continuity of care, in my explanation, is the  
13 ability to follow a patient from one environment to another  
14 to make sure that they have the best and most appropriate  
15 treatment plan and followup that they can have.  
16 Q. As Project Coordinator, were you responsible for  
17 just overseeing multiple individuals who all were involved  
18 in trying to develop that program?  
19 A. I didn't oversee anyone other than my  
20 Administrative Assistant. That was my supervisory  
21 responsibility, but I sat on the committees and various  
22 organizations that helped compile this plan.  
23 Q. Your position at the hospital, at that time was  
24 Project Coordinator/Director Continuity of Care?  
25 A. Yes, sir. We would always have at that time an

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803/356-1990  
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1 official title and a working title.

2 Q. Which was which?

3 A. The official title was Project Coordinator. The  
4 working title was Continuity of Care Director.

5 Q. In that position did you work in Human Resources  
6 or Personnel?

7 A. No.

8 Q. Your resume says that, well, you worked there for  
9 two years. What was your reason for leaving your  
10 employment with Bryan Psychiatric Hospital?

11 A. My reason for leaving Bryan was I was promoted to  
12 Business Manager and C.F.O. for Crafts-Farrow Hospital.

13 Q. And you are pointing again a little bit further  
14 up on page two of your resume, is that correct?

15 A. Yes.

16 Q. Your resume says that you were at Crafts-Farrow  
17 State Hospital, you began your employment there in 1990?

18 A. I believe that's correct.

19 Q. It says that you left Bryan Psychiatric Hospital  
20 in 1989?

21 A. That's correct.

22 Q. Was there a year-long gap?

23 A. It was December and January.

24 Q. Briefly explain to the jury what you did at

25 Crafts-Farrow State Hospital in the capacity of Business

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18

1 Manager or Chief Financial Officer?

2 A. I managed most of the operations for the  
3 hospital. Our Medical Records, Supply and Service, our  
4 Human Resources, I believe, came under me, and a number of  
5 different operational departments.

6 Q. Did you actively manage Human Resources or was  
7 there an existing Human Resources Manager?

8 A. We had a Human Resource Manager. I don't recall  
9 specifically whether that department was one of mine at  
10 that time or not. I had several, but, you know, she worked  
11 in my area and everything came through me. But I would  
12 have to see the organizational chart.

13 Q. But to your knowledge you would have had a Human  
14 Resource Manager who would manage the day-to-day human  
15 resources issues and matters concerning the hospital?

16 A. That's correct.

17 Q. And that manager would report to you?

18 A. I'm not sure. It was either me or the hospital  
19 administrator.

20 Q. So as we sit here today you cannot specifically  
21 recall whether you actively oversaw management of the Human  
22 Resource Manager?

23 A. I don't.

24 Q. Or for that matter Human Resource Department?

25 A. I don't.

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803/356-1990  
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1 Q. It says in 1991, so I'm assuming this must have  
2 been while you were working at Crafts-Farrow State  
3 Hospital---

4 A. That's correct.

5 Q. ---that you served as Executive Assistant to the  
6 State Commissioner for the South Carolina Department of  
7 Mental Health, is that correct?

8 A. That's correct.

9 Q. Could you explain to the jury what you did as  
10 Executive Assistant to the State---

11 A. I managed the operations of the office for the  
12 State Commissioner. I advised him on matters related to  
13 the management and organization.

14 Q. How large was the State Commissioner's Office in  
15 the sense of personnel actually working in the office?

16 A. Oh, I don't recall.

17 Q. Can you give me your best judgment?

18 A. Well, I don't know. I know we had two or three  
19 secretaries. We had operational folks who reported to us.  
20 I mean I don't have a number.

21 Q. Would it have been less than 20?

22 A. Yes.

23 Q. Less than ten?

24 A. I am not sure.

25 Q. So it would have been less than 20, maybe less

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803/356-1990  
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20

1 than ten that worked in the entire State Commissioner's  
2 Office, is that correct?

3 A. That's correct.

4 Q. Did you have anyone reporting to you in that  
5 office?

6 A. Only the Administrative Assistant.

7 Q. What did the Administrative Assistant do?

8 A. Typing, filing, answering the phone. Clerical  
9 type work. Administrative work.

10 Q. Basically a secretary, someone of that nature?

11 A. Yes.

12 Q. So you would have had a secretary reporting to  
13 you?

14 A. Yes. Probably.

15 Q. Pardon?

16 A. As far as recall, yes.

17 Q. Were you directly responsible for overseeing any  
18 departments of the South Carolina Department of Mental  
19 Health at that time?

20 A. No.

21 Q. So you were strictly in an advisory capacity to  
22 the State Commissioner?

23 A. That's correct.

24 Q. What was your reason for ceasing to serve as  
25 Executive Assistant to State Commissioner?

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1 A. I wanted to get back to hospital management.  
 2 Q. How were you able to be an Executive Assistant  
 3 while you were also functioning as Chief Financial Officer  
 4 at Crafts-Farrow State Hospital?  
 5 A. The Commissioner appointed me to that position.  
 6 Q. Did you have an office in the State  
 7 Commissioner's Office?  
 8 A. Yes. In the building.  
 9 Q. In the building?  
 10 A. Yes. Not in his, not in his office.  
 11 Q. Right. I don't specifically mean -- well, to  
 12 help us out can we call the State Commissioner's Office the  
 13 Central Office?  
 14 A. Yes.  
 15 Q. Would that be easier in keeping straight what is  
 16 what?  
 17 A. Yes.  
 18 Q. So you did have an office in the Central Office?  
 19 A. That's correct.  
 20 Q. Did you also have an office at Crafts-Farrow  
 21 State Hospital?  
 22 A. At that time?  
 23 Q. Correct.  
 24 A. No. I mean there was an office there that was  
 25 for me. I'm not sure what they did at Crafts-Farrow when I

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 803/356-1990  
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22

1 left there, whether they named an interim or not, I don't  
 2 know. But when I went back to Crafts-Farrow I know my  
 3 position was still there.  
 4 Q. So when you were serving as an Executive  
 5 Assistant to the State Commissioner, you were working full  
 6 time in the Central Office?  
 7 A. That's correct.  
 8 Q. Were you carrying on any duties as Business  
 9 Manager or Chief Financial Officer at Crafts-Farrow during  
 10 that same time?  
 11 A. No. Not for Crafts-Farrow.  
 12 Q. So it was like you went on a hiatus from  
 13 Crafts-Farrow while you were at the Executive Assistant's  
 14 Office?  
 15 A. That's correct.  
 16 Q. Do you know if anyone served in your capacity as  
 17 Business Manager or C.F.O. while you were gone?  
 18 A. I don't know.  
 19 Q. But you left the Central Office and went back to  
 20 Crafts-Farrow, is that correct?  
 21 A. That's correct.  
 22 Q. And then you subsequently left Crafts-Farrow to  
 23 go to the U.S. Department of Housing and Urban Development?  
 24 A. That's correct.  
 25 Q. Why did you leave Crafts-Farrow?

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 803/356-1990  
 800/923-8899

1 A. I received a Presidential appointment to the  
 2 Clinton administration.  
 3 Q. You received a Presidential appointment by  
 4 President Clinton?  
 5 A. That's correct.  
 6 Q. To do what?  
 7 A. To be the Director of Hospital Mortgage Insurance  
 8 for H.U.D.  
 9 Q. You were the Director of Hospital Mortgage and  
 10 Insurance for one year, is that correct?  
 11 A. Yes.  
 12 Q. Did you actively reside in Washington, D.C.  
 13 during that year?  
 14 A. I commuted back and forth.  
 15 Q. How many days a week would you have worked in  
 16 Washington during that time?  
 17 A. In Washington?  
 18 Q. Correct.  
 19 A. I don't know. We had hospitals all over the  
 20 country, so my travel schedule was extensive, so the number  
 21 of days in Washington, you know, I just don't recall.  
 22 Q. During that time, was your primary residence  
 23 still in South Carolina?  
 24 A. That's correct. My residency was here.  
 25 Q. Were you able to perform any of your functions as

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 803/356-1990  
 800/923-8899

24

1 director while being physically present in South Carolina?  
 2 A. Physically present?  
 3 Q. Correct.  
 4 A. Yes.  
 5 Q. What functions as director were you performing  
 6 out of South Carolina?  
 7 A. Well, I didn't work from South Carolina. When I  
 8 came to South Carolina, there was work that I had to do  
 9 ongoing. This wasn't something that started on Monday and  
 10 ended on Friday night. So I'm sure letters and  
 11 correspondence and other administrative type work that  
 12 needed to be done when I was here I would perform.  
 13 Q. How many hours a week did you devote to your job  
 14 as Director of Hospital Mortgage?  
 15 A. A lot more than 40.  
 16 Q. That's fine. I am just trying to get an idea,  
 17 Mr. Dillihay. And you served in that capacity for one full  
 18 year or less than a year?  
 19 A. I don't know. It may have been more. I don't  
 20 know. I can go back and check.  
 21 Q. Why did you cease serving as Director?  
 22 A. I wanted to return to home to be with my family.  
 23 Q. Your family resides here in Columbia?  
 24 A. That's correct.  
 25 Q. Were there any other reasons?

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 803/356-1990  
 800/923-8899

1 A. I am sure there were, but I mean the primary  
2 reason was I wanted to be closer to my three sons and my  
3 wife.

4 Q. Did anyone ask you to resign as Director?

5 A. No.

6 Q. Did you resign as Director?

7 A. Yes.

8 Q. Did you feel any pressure to resign as Director?

9 A. No.

10 Q. After resigning as Director, did you begin work  
11 immediately as Hospital Administrator with the South  
12 Carolina Department of Mental Health?

13 A. Yes.

14 Q. Could you briefly explain to the jury what you  
15 did as Hospital Administrator?

16 A. Well, in varying capacities at different  
17 hospitals I was the Chief Administrator, Chief Operating  
18 Officer responsible for a number of different departments  
19 including Finance, Budget and Human Resources, Supplies.  
20 Pretty much the things listed here in my resume.

21 Q. How many individuals did you directly oversee as  
22 Hospital Administrator?

23 A. I don't recall. It would depend on which  
24 hospital at the time.

25 Q. Let me go back briefly. As Director of the

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26

1 Hospital Mortgage Insurance staff, how many individuals did  
2 you directly oversee?

3 A. Directly oversee, three.

4 Q. Three?

5 A. Yes.

6 Q. What capacity did the other three serve, were  
7 they secretarial or some other capacity?

8 A. No. We had two bond portfolio analysts and one  
9 executive assistant.

10 Q. Was the Executive Assistant someone working in an  
11 administrative capacity like a secretary?

12 A. Well, maybe a little more elevated than a  
13 secretary. Washington had very clear guidelines for what  
14 their administrative staffs did. Because of my position,  
15 my Administrative Assistant was -- well, I would say she  
16 was a little more than a secretary, her duties.

17 Q. So you had an executive assistant and two bond  
18 portfolio managers?

19 A. Yes.

20 Q. Answering to you?

21 A. Yes, sir.

22 Q. Where were your executive assistant and bond  
23 portfolio managers located?

24 A. In my suite.

25 Q. Where were they working from?

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1 A. What city?

2 Q. Yes.

3 A. Washington.

4 Q. Other than managing that office composed of three  
5 individuals and yourself, were you responsible for  
6 overseeing any other offices?

7 A. We had responsibilities for another office that  
8 we had an agreement with, another federal agency that did  
9 our hospital construction management and oversight. I  
10 happened to be responsible for the oversight of that. I  
11 don't recall what the name of it was, but those were the

12 folks who actually went out to the site and made sure  
13 construction was going the way it was supposed to go. We  
14 also had a relationship with our underwriters who  
15 underwrote the bonds.

16 Q. How many people worked in the other office that  
17 you're referring to?

18 A. I don't know. I know it was a bunch of them.

19 Q. Who was responsible for personnel matters in the  
20 other office?

21 A. I don't know. That was via contracts with those  
22 other agencies. I don't recall.

23 Q. So you were not, in your position as Director,  
24 you were not responsible for personnel matters in the other  
25 office?

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803/356-1990  
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28

1 A. No.

2 Q. Were you responsible for personnel matters in  
3 your own office?

4 A. Yes.

5 Q. And that responsibility would have encompassed  
6 three individuals?

7 A. Yes.

8 Q. Were those three individuals considered  
9 professionals?

10 A. Yes.

11 Q. As Hospital Administrator with the South Carolina  
12 Department of Mental Health, your resume says that you  
13 worked with two different facilities, is that correct?

14 A. I believe it was -- let's see, yes, Hall, Byrnes,  
15 yes, at that particular time, Hall and Byrnes. Should have  
16 been Bryan. There is an oversight. There are actually  
17 three hospitals.

18 Q. Bryant?

19 A. B-r-y-a-n, Bryan Psychiatric Hospital.

20 Q. So we have a Byrnes and a Bryan?

21 A. That's correct.

22 Q. So you would have served as Chief Operating  
23 Officer for three separate facilities?

24 A. At some time. Understand we were consolidating  
25 our facilities. So as one shrank, the administrative staff

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1 would take over the management and operation of another  
2 one.

3 Q. Were any of these facilities being closed down at  
4 that time?

5 A. Byrnes.

6 Q. Byrnes was being closed?

7 A. That's correct. As a medical center. I think  
8 they still use the building.

9 Q. As Chief Operating Officer, did you oversee the  
10 Department of Human Resources within the hospital?

11 A. That's correct.

12 Q. Did you serve as Chief Operating Officer for  
13 three different facilities?

14 A. Yes.

15 Q. During that five-year time frame?

16 A. Yes. Whatever the time frame was. Yes.

17 Q. Would the respective facilities have had their  
18 own Personnel Manager?

19 A. Yes.

20 Q. Would that Personnel Manager have answered to  
21 you?

22 A. Yes.

23 Q. Your resume says that from Hospital Administrator  
24 you went to Deputy Director for Administration with the  
25 South Carolina Department of Juvenile Justice?

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803/356-1990  
800/923-8899

30

1 A. That's correct.

2 Q. I would imagine that is an entirely separate  
3 department or division of the State of South Carolina?

4 A. That's correct.

5 Q. So you went from the Mental Health Department to  
6 the Juvenile Justice Department?

7 A. That's correct.

8 Q. Why did you leave the Mental Health Department?

9 A. I took an appointment as Deputy Director for  
10 Administration at D.J.J. in the Hodges administration.

11 Q. What is the Hodges administration?

12 A. Governor Hodges.

13 Q. What is his full name?

14 A. Jim. I don't know what his full name is. Jim  
15 Hodges.

16 Q. You stated you took an appointment?

17 A. That's correct.

18 Q. Briefly explain to the jury what you did as  
19 Deputy Director.

20 A. I oversaw all administrative operations for the  
21 Department which included a number of different areas, some  
22 of which would have been Information Systems, Human  
23 Resources, Finance and Accounting, Medicaid Management.

24 Q. But it would have included Human Resources?

25 A. Yes.

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1 Q. As with the Mental Health Department, would you  
2 have Human Resource Managers that would answer to you?

3 A. Yes.

4 Q. Or they could also be called Human Resource  
5 Directors, correct?

6 A. They could, I guess.

7 Q. And you served in that capacity for four years?

8 A. Yes, sir.

9 Q. Would that be through the Hodges administration?

10 A. Yes. I left at the conclusion of -- well, I left  
11 after Governor Sanford took office that spring sometime  
12 after he took office.

13 Q. So as a gubernatorial appointment, then you would  
14 have relinquished that position when a new administration  
15 came in, is that correct?

16 A. Yes. That's correct.

17 Q. Back when you were working with the South  
18 Carolina Department of Mental Health, did the Mental Health  
19 Department operate under a state merit system?

20 A. You know, I am not clear what they operated  
21 under. The mental health authority here does have a  
22 separate designation as an authority. We do have merit  
23 positions within the Department, but I am not sure what the  
24 relationship was.

25 Q. Do you know if Human Resource Managers or Human

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32

1 Resource Directors and their respective staffs occupy merit  
2 positions within the South Carolina Department of Mental  
3 Health?

4 A. I don't recall.

5 Q. Do you know today?

6 A. No.

7 Q. What I mean is do you know if they do today?

8 A. Do I know if they are in the merit system today?

9 Q. Correct.

10 A. No. I am not affiliated with the state system  
11 anymore.

12 Q. When you left the Hodges administration it says  
13 that you then became Director, Board of Directors of  
14 Palmetto Health Alliance.

15 A. Not when I left. I was already a member of  
16 Palmetto Health Alliance Board of Directors.

17 Q. What is the Palmetto Health Alliance?

18 A. What is Palmetto Health?

19 Q. Correct.

20 A. It's the largest health care system in the state.

21 It's an alliance primarily of two hospitals. I believe  
22 they own and/or operate about five or six more, at least  
23 they were when I was there. Tertiary care, critical care,  
24 the two largest hospitals in Columbia came together as part  
25 of an alliance. During that time I also sat on the Board

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803/356-1990  
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1 of Trustees for Richland Memorial Hospital.  
2 Q. Is the Palmetto Health Alliance, is it a private  
3 not-for-profit health care provider?  
4 A. Yes. It is.  
5 Q. As a private health care provider, it is not  
6 owned or operated by the State of South Carolina?  
7 A. Palmetto Health is not.  
8 Q. Nor is it owned or operated by the City of  
9 Columbia or any other city?  
10 A. No. Not to my knowledge.  
11 Q. Do you know why you were appointed Director?  
12 A. Why I was appointed Director?  
13 Q. Correct. Do you know why you were asked to serve  
14 as Director?  
15 A. Yes. The Board asked me to.  
16 Q. Do you know why they asked you to?  
17 A. Well, I am not sure what their reasons are, but I  
18 would imagine it would be because of my experience in the  
19 community, my experience with hospital management and my  
20 professionalism.  
21 Q. How many members of the Board are there?  
22 A. I don't recall, but I know it's somewhere around  
23 a dozen, maybe 15. I don't know.  
24 Q. Do you still serve on the Board of Directors for  
25 Palmetto Health?

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34

1 A. No.  
2 Q. When did you cease serving there?  
3 A. I am not sure. I don't know. Sometime just  
4 before I came to Alabama.  
5 Q. Did you cease serving on the Board in order to go  
6 to Alabama?  
7 A. Well no, I was just tired and wanted rest. Knew  
8 I was going to be taking a job soon. Just decided not to  
9 do another appointment.  
10 Q. Did you resign then from the Board?  
11 A. I let my term expire, and then did not accept  
12 another.  
13 Q. Did anyone ask you to renew your term?  
14 A. Several people.  
15 Q. And you chose to let it expire?  
16 A. Yes.  
17 Q. When you were working with the South Carolina  
18 Department of Juvenile Justice, did that department operate  
19 under a merit system whether it be a state system or its  
20 own system?  
21 A. I don't recall. The merit system with the state,  
22 you have state agencies where they do have merit system  
23 positions and other positions, and I don't recall which  
24 ones. I am sure DJJ may have had some, but I simply don't  
25 know.

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803/356-1990  
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1 Q. So even though you would have been responsible  
2 for overseeing Human Resources, you cannot recall today  
3 whether Human Resources operated pursuant to or under a  
4 state merit system?  
5 MR. NIX: Object to the form of the question.  
6 BY MR. MOZINGO:  
7 Q. You can answer the question.  
8 A. I don't recall.  
9 (Plaintiffs' Exhibit No. 3 was  
10 pre-marked for identification.)  
11 Q. Let me show you what has been marked Plaintiffs'  
12 Exhibit Three. I will represent to you that this is a  
13 download from a web page.  
14 A. Uh-huh.  
15 Q. From the Center for Health Care Governance. Are  
16 you familiar with that center?  
17 A. Yes.  
18 Q. What is it?  
19 A. It is a group that is in association with the  
20 American Hospital Association and they provide  
21 knowledge-based seminars and other information on hospital  
22 management.  
23 Q. What is your connection to that center?  
24 A. I agreed to be on their speaker's bureau list.  
25 Q. As a member of the speaker's bureau, does that

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803/356-1990  
800/923-8899

36

1 mean a member of that group they can ask you to come speak?  
2 A. Well, not a member of the group. Well, I guess  
3 they could, yes, the members of the group will ask you to  
4 come speak if you are available or if someone sees you out  
5 on the web they might go through the group to get someone  
6 to do it. I have never to my recollection done any recent  
7 work for them.  
8 Q. How long were you affiliated with the group as a  
9 speaker?  
10 A. I don't remember.  
11 Q. Maybe I should say the Center since the title is  
12 the Center for Health Care Governance.  
13 A. I don't remember when I started. I first got  
14 involved with them on a trip to San Diego or Washington, so  
15 that would have been, I don't know, somewhere around 2000  
16 maybe.  
17 Q. Are you still affiliated with the center?  
18 A. They write every year to ask you if you will  
19 allow them to carry your name. I have not agreed to do  
20 that for some time, but I don't know if they have taken  
21 anything down off of the web site.  
22 Q. If you look at the bottom of the Exhibit there,  
23 in front of you, you can see that this page was downloaded  
24 on May 29, 2008.  
25 A. Okay.

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803/356-1990  
800/923-8899

1 Q. So according to the center, you are still with  
2 their speaker's bureau.  
3 A. Okay.  
4 Q. Is that true?  
5 A. Well, obviously they're still carrying my name,  
6 but I am not doing any work for them.  
7 Q. So you did not realize before today that the  
8 center continues to advertise you as a speaker, one of  
9 their speakers?  
10 A. No.  
11 Q. It's your testimony that you are no longer  
12 serving as a speaker with that center, is that correct?  
13 A. Well, if I get a call I might entertain the  
14 option. I don't know. If they still have me listed as an  
15 active member. I just have to call Jamie and see.  
16 Q. Are you remunerated or paid to be on the  
17 speaker's bureau?  
18 A. If you go out and do a presentation for them they  
19 pay the organization, and the organization of course pays  
20 the speaker. I believe that's the way it was set up.  
21 Q. So you are remunerated whenever you speak?  
22 A. On their behalf.  
23 Q. On their behalf? It says here that one of the  
24 presentation or facility topics that you speak on is the  
25 importance of having a diversified board?

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803/356-1990  
800/923-8899

38

1 A. That's correct.  
2 Q. And very generally, what is that topic about?  
3 A. That topic is about, particularly if you are  
4 dealing with community-based hospitals, having the right  
5 types of community reps on there, making sure that you have  
6 the right mix of people, that you have folks who are able  
7 to understand complicated financial statements, legal  
8 issues, community issues, and other types of issues related  
9 to the governance of the hospital.  
10 Q. Does having the right mix of people include  
11 including minorities as part of that mix?  
12 A. I don't speak to that specifically, you know, but  
13 I would say having a diversified group that is  
14 representative of the population that you are serving is  
15 more what it responded to.  
16 Q. And would it then, using the same logic then if  
17 you are, let's say, serving a population in Montgomery,  
18 Alabama, that may be roughly 50 percent African American,  
19 50 percent Caucasian, would it include trying to have a  
20 board that racially represents that population mix?  
21 A. I don't know if you want to say it should  
22 represent it proportionately, but I would certainly say  
23 that if 50 percent of your community is one thing or  
24 another that you ought to have some stakeholder  
25 representation on the board.

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803/356-1990  
800/923-8899

1 Q. So stakeholder representation means that  
2 certainly if your community has an identifiable segment of  
3 the population group then you would want some type of  
4 representation---  
5 A. Absolutely.  
6 Q. ---of that group as part of your mix?  
7 A. Absolutely.  
8 Q. Has your presentation specifically focused on  
9 including a representation of African Americans?  
10 A. No.  
11 Q. Or has it focused on other population groups?  
12 A. It focuses on the types of people that you need  
13 to move the organization forward, or focused, rather. I  
14 haven't done this in a while. But when we talk about  
15 hospital alliances and being able to operate those  
16 hospitals over a vast community, there are a number of  
17 different types of people that you would want on that board  
18 as I stated earlier. You want people who are able to  
19 understand complicated financial statements, get their  
20 hands and eyes and arms around legal issues, understand the  
21 complexities of the medical community and how that  
22 community relates to the overall health and governance of  
23 the hospital. So it's more, it's not about, you know, it's  
24 about how do you move the hospital forward, how does the  
25 board do its job in doing that.

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800/923-8899

40

1 Q. From what I understand, from what I have  
2 interpreted what you are saying is you want to have a board  
3 that has that right kind of mix---  
4 A. No. I don't want to have the board. When they  
5 call me and ask me what does this mean, I give them my  
6 impression of what a diversified board should represent.  
7 Q. Let me restate that. What I interpret what you  
8 are saying to me, and correct me if I am wrong, is that you  
9 want to have a diversified -- you recommend, excuse me,  
10 don't let me say you -- you recommend that an entity have a  
11 diversified board that encompasses the skills you discussed  
12 while also being reflective of the stakeholders in that  
13 community?  
14 A. That's correct.  
15 Q. And stakeholders also meaning identifiable  
16 population groups in that community such as African  
17 Americans, Hispanics, Caucasians?  
18 A. Depending on what the community base might be.  
19 Q. But that stakeholder group would then also  
20 consist of members of identifiable population groups of  
21 that community?  
22 A. It could. It's not an absolute. But that would  
23 certainly be a recommendation that I would ask them to  
24 consider.  
25 Q. That's certainly an objective you would

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803/356-1990  
800/923-8899



1 recommend?  
2 A. Certainly.  
3 Q. The next bullet point says identifying the right  
4 candidates for Your Board. Is that basically the same  
5 thing, taking into consideration the exact same things we  
6 just discussed?  
7 A. Well, it is, and it's a little different. It's  
8 how do you go about identifying a candidate base and how do  
9 you collect that base as your board starts to age out or  
10 mature out. When someone reaches the end of the term is  
11 not when you need to start looking for a replacement for  
12 the board. This piece of it talks about how do you set up  
13 that process for developing a candidate base so you are not  
14 scrambling around if a board member suddenly dies or  
15 suddenly leaves.  
16 Q. So in layman's terms, if we are wanting to  
17 identify the right candidate and have a diversified board,  
18 so in layman's terms if I have a board in Montgomery, I  
19 want to find people with skills that I need for that board,  
20 whether it be accounting skills or personnel skills, and  
21 at the same time I want that board to consist of African  
22 Americans since that is a large stakeholder group in  
23 Montgomery, Alabama, is that correct?  
24 A. What is the question again?  
25 Q. So based upon the presentation topics that you

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803/356-1990  
800/923-8899

42

1 give in the importance of having a diversified board and  
2 identifying the right candidates, based upon those  
3 presentation topics, it's my understanding if I have a  
4 board in Montgomery, Alabama, let's say a board for the  
5 hospital, okay, and I am identifying candidates for that  
6 board, then I need to identify at least two things, whether  
7 the candidate has a skill that I may need for that board  
8 such as accounting or legal, is that correct?  
9 A. That's correct. That would be a good example.  
10 Q. And then, secondly, whether those candidates are  
11 African American or a member of some other racial group  
12 that has a large presence in Montgomery, Alabama, is that  
13 true?  
14 A. You are asking me if I would recommend that to  
15 you?  
16 Q. Correct. Yes.  
17 A. I don't know. I don't know what your hospital --  
18 each hospital system in each community is very different.  
19 And I don't know what we are talking about in the framework  
20 of the hospital in Montgomery. I can speak to Columbia and  
21 our racial composition and our representation on the board.  
22 We don't go out and say we want an African American for a  
23 board position. I don't think that is the right thing to  
24 do. As I said, what we try to get to, when we talk about  
25 composition of a board is how do we include large

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803/356-1990  
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1 stakeholder groups.  
2 Now a group in your city may be  
3 representative of a large stakeholder group, for instance,  
4 whom represents the greatest number of emergency admissions  
5 to your emergency rooms for indigent care. That is a big  
6 group. That is something that you deal with. That group  
7 may consist of a largely poor and/or minority population.  
8 That would be one of the things that I would talk about as  
9 far as developing stakeholder interest in your board, but I  
10 don't ever go out and say that you ought to put anyone in  
11 any position because of the color of their skin.  
12 Q. Help me out then. How do we define stakeholder?  
13 A. Stakeholders might be different in any community.  
14 For instance, you have the medical community which is a  
15 stakeholder group. You have in that medical community  
16 maybe a large group of whatever it is you practice.  
17 Someone who may do OB/GYN may be a large part of what you  
18 do. You may want to include that person because they  
19 provide care to a large membership of your hospital  
20 admissions.  
21 We have a hospital here that focuses mainly  
22 on women's health care, so certainly if I am looking for  
23 someone to serve on my board and that is a large percentage  
24 of my revenue, I would like someone from that medical  
25 community to be representative of it. Again, if I'm having

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44

1 trouble with my emergency or trauma care where I have  
2 people entering the system as a part of access to the  
3 system, I wouldn't want to have someone there that was  
4 representative of that group.  
5 You also have other groups. You have  
6 associations of groups of professionals, you know, the  
7 Black Lawyers Association, the Black Physicians  
8 Association, whatever, and I don't know if that is their  
9 names, but if those are representatives who are  
10 representative of large stakeholder pieces in the operation  
11 that you serve, my advice to the board is you need to be  
12 crafting your policies and practices for selecting board  
13 members around identifying these members and cultivating  
14 those memberships or particular people for membership on  
15 the board.  
16 Q. So in my example of Montgomery, Alabama, and I  
17 know the example you have given you can break down those  
18 groups into, you said, black lawyers. You can break it  
19 down. You could have black married lawyers or black single  
20 lawyers, or black gay lawyers---  
21 A. Whatever.  
22 Q. Just keep breaking them down, but on a very  
23 general level, and again, the example I gave, Montgomery,  
24 Columbia may be a better example, but if you have a board  
25 of a hospital in Montgomery and Columbia and you have a

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803/356-1990  
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1 sizable minority population, then you want members of that  
2 minority population serving on your board?

3 A. Or members of the representative stakeholder  
4 groups to serve on the board.

5 Q. And minority populations if they can be  
6 stakeholder groups?

7 A. Could be. If we were on an Indian reservation  
8 and all of the people in that group represented all of the  
9 people of that tribe, my advice to the board would be you  
10 need to look at this group for inclusion in membership.

11 Q. Have you ever made the comment to anyone with the  
12 State Department of Mental Health that there were too many  
13 Whites in the Mental Health Department?

14 A. No.

15 Q. Have you ever made the comment to anyone that  
16 there were too many Whites in the Central Personnel Office  
17 in the Mental Department?

18 A. No.

19 Q. One of the last bullet points I see is Building a  
20 Diversified Management Team: A How-to Example for  
21 C.E.O.'s.

22 A. Yes.

23 Q. Is that kind of the same thing we just talked  
24 about or is that an entirely different subject?

25 A. That's pretty much the same thing but it's spoken

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803/356-1990  
800/923-8899

46

1 to in relationship to the C.E.O.'s responsibility in the  
2 process. Most C.E.O.'s on private corporate boards are  
3 members of the board but they recuse themselves from votes  
4 to avoid conflict of interest. But the C.E.O. still has to  
5 work with the board, so the C.E.O. has a role and a  
6 responsibility in this process. And as we select members  
7 for the board, we do want to select people who not only can  
8 represent the stakeholder groups but people who can work  
9 with that C.E.O.

10 Q. Have you ever made the comment to anyone with the  
11 State Department of Mental Health that there are not enough  
12 Blacks working in the Mental Health department?

13 A. Not enough Blacks? I don't see how I could make  
14 that statement. I don't know what the representation is,  
15 but I do know there was a huge amount of representation of  
16 African Americans in the Department of Mental Health.

17 Q. Was there a huge amount of representation of  
18 African Americans in management and leadership positions in  
19 the Department of Mental Health?

20 A. Huge amount?

21 Q. Correct.

22 A. I wouldn't say huge. I would say that it was a  
23 fair representation, but not huge.

24 Q. Did you ever say to anyone that there were not  
25 enough African Americans working in the Central Personnel

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803/356-1990  
800/923-8899

1 Office at Alabama Department of Mental Health?

2 A. No.

3 (Plaintiffs' Exhibit No. 4 was  
4 pre-marked for identification.)

5 Q. Let me show you what's been marked, Mr. Dillihay,  
6 as Plaintiffs' Exhibit Four, and quite frankly, I always  
7 like to represent to anyone who is testifying where I get a  
8 document from. I don't know where I got this. But that is  
9 your picture, correct?

10 A. Looks like the same picture that came off of this  
11 thing (indicating Exhibit Three).

12 Q. Look at the biographical information next to it.  
13 It says Otha R. Dillihay, Sr. You are Otha R. Dillihay,  
14 Sr., correct?

15 A. Yes.

16 Q. Does that occupation, education and service  
17 information, does that information reflect you?

18 A. Well, I guess it could. I don't know where it  
19 came from.

20 Q. Look at it and tell me if any of it's incorrect  
21 as it pertains to you.

22 A. It has the university down here incorrect. It  
23 says South Carolina. It should be South Carolina State.  
24 Actually this looks like the same thing this is (referring  
25 to Exhibit Three).

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803/356-1990  
800/923-8899

48

1 Q. It very well could be. I just didn't compare  
2 them enough. Other than it should say South Carolina State  
3 University, other than that one point, is there anything  
4 else on there that is inaccurate?

5 A. I don't know. I have to go back and look.

6 Q. What is the National Association for Black Public  
7 Administrators?

8 A. What is it?

9 Q. Yes, sir.

10 A. It is an affiliation, I believe they are based  
11 out of Washington, D.C., and they are -- I am not sure of  
12 what their relationship is with the International County  
13 Managers Association, but they do work in conjunction with  
14 them. The purpose of that organization was to create  
15 education and other opportunities for African Americans to  
16 move into positions of responsibility in government,  
17 primarily city and county government.

18 Q. Are you a member of that organization?

19 A. Not anymore, no.

20 Q. You were a member at one time?

21 A. I was when I went through their Executive  
22 Leadership Institute, yes.

23 Q. Is the correct name of that organization the  
24 National Forum for Black Public Administrators?

25 A. I believe it is.

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803/356-1990  
800/923-8899

1 (Plaintiffs' Exhibit No. 38 was  
2 pre-marked for identification.)  
3 Q. Let me show what you what I have marked as  
4 Plaintiffs' Exhibit 38. Is that the organization that you  
5 are talking about?  
6 A. Yes. It is.  
7 Q. You went through their mentor program?  
8 A. No. I went through their Executive Leadership  
9 Program. The mentor program was another program.  
10 Q. What does their Executive Leadership Program  
11 consist of?  
12 A. Oh, my goodness.  
13 Q. Generally. I don't want you to---  
14 A. It was -- I don't know -- practically a year long  
15 endeavor where the National Forum paid for a group of  
16 selected students, well, people, from around the country, I  
17 don't know how many were in my group. I would imagine  
18 there would have been 20 or 25. We spent a month each  
19 month for, I don't know, roughly a year training at  
20 universities like Harvard, Syracuse, University of Texas at  
21 Austin at the LBJ School, University of Louisville School  
22 of Business, Georgetown and other affiliations. We studied  
23 and worked on projects related to government management  
24 which included operations, finance, budgeting, just a host  
25 of anything that would fall under, say, the purview of a

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800/923-8899

50

1 senior government official.  
2 Q. Is this a true statement of that organization,  
3 the National Forum for Black Public Administrators, is it  
4 true that that organization "is committed to strengthening  
5 the position of Blacks within the challenging and  
6 competitive field of public administration?"  
7 A. Is that a true statement?  
8 Q. Correct.  
9 A. I don't know if it's true.  
10 Q. Well, is it true of that organization as you know  
11 that organization?  
12 A. Well, I don't know. I don't know what the --  
13 this organization and I have not-- I have not been a member  
14 of the organization for sometime. Now if you are asking me  
15 if this was on their web site and this would be a true  
16 affiliation of what that organization represents, I think  
17 you would have to check with them, but I can tell you that  
18 they did work to promote skill sets that senior government  
19 officials would find useful in their capacities as senior  
20 government officials.

21 (Plaintiffs' Exhibit No. 39 was  
22 pre-marked for identification.)  
23 Q. Let me show you what's been marked Plaintiffs'  
24 Exhibit 39. This is from their North Texas Chapter.  
25 MR. NIX: Can you give me a minute, Flynn?

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1 MR. MOZINGO: Sure, and I will tell you exactly  
2 where I'm going to read. It's the last full paragraph on  
3 the bottom of that first full page.

4 MR. NIX: With the dot by it?

5 MR. MOZINGO: No, the one above it. Not  
6 subparagraph. Splitting hairs. I'm splitting hairs,  
7 you're not.

8 BY MR. MOZINGO:

9 Q. That paragraph says: "The NFBPA," the acronym  
10 for National Forum for Black Public Administrators, "is  
11 committed to strengthening the position of Blacks within  
12 the challenging and competitive field of public  
13 administration." Do you believe that to be an accurate  
14 representation of what that forum is about?

15 A. What they do now?

16 Q. Yes.

17 A. I don't know. I haven't been a member of the  
18 organization, I don't believe, since I left after the  
19 Executive Leadership Institute. I can say that that was  
20 probably one of the things they were trying to do while I  
21 was a member, but I can't speak to what they are doing now.

22 Q. We'll talk about when you were a member. So when  
23 you were a member that was a true statement about that  
24 organization?

25 A. I don't know what the statement was, but I know

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803/356-1990  
800/923-8899

52

1 that that was one of the things that they endeavored to do.  
2 Q. So when you were a member of that organization,  
3 it was committed to strengthening the position of Blacks  
4 within the field of public administration?  
5 A. If that is what they say.  
6 Q. I am asking was that true when you were a member?  
7 A. I don't recall.  
8 Q. You don't recall what they were committed to when  
9 you were---

10 A. I don't recall their specific mission statement.  
11 I can tell you generally that that was one of the things  
12 that I felt that the organization was trying to promote,  
13 and that was a skill set of highly qualified public  
14 officials who were Black so they could be in a position to  
15 compete for some of the senior management positions in  
16 government across this country.

17 Q. So when you were a member of that organization,  
18 to your knowledge, one of the things they promoted was the  
19 strengthening of the position of Blacks within the field of  
20 public administration?

21 A. I don't know what position of Blacks means. I  
22 just made my statement.

23 Q. So you can't answer that question that I just  
24 stated because you don't understand?

25 A. I don't understand the meaning of position, what

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803/356-1990  
800/923-8899

1 you're saying when you're saying positioning Blacks.  
 2 Q. I'm just reading from this exhibit.  
 3 A. Well, I am as well.  
 4 Q. So you cannot answer my question then?  
 5 A. I believe I have answered it.  
 6 Q. I believe your answer was you don't know what  
 7 they mean by the positioning of Blacks.

8 A. I believe she can read back my answer, but I  
 9 thought my answer was that my recollection of the group at  
 10 that particular time was to afford a certain representative  
 11 group of people with knowledge and skill sets that they  
 12 could use to be competitive in the market of senior  
 13 government positions across the country.

14 Q. And that group of people you were referring to is  
 15 or are African Americans?

16 A. That is correct.

17 Q. It also says that an aim of theirs is to increase  
 18 the number of qualified Blacks appointed to executive  
 19 positions in the public service arena. Was that one of  
 20 their aims when you were a member of the group?

21 A. Appointed? I guess if you are using the term  
 22 appointed loosely, again, the focus as I understood it was  
 23 to equip this group of people with a requisite skill set to  
 24 manage complex government agencies. Some of these people  
 25 went out and got jobs, I guess you can use the term

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 803/356-1990  
 800/923-8899

54

1 appointed. I am appointed to my position now. So whether  
 2 they were appointed by a political process or appointed by  
 3 some type of review, you know, competitive review, I don't  
 4 know.

5 Q. When you were a member of that group, was one of  
 6 their objectives to increase the number of Blacks serving  
 7 in executive positions in the public service arena?

8 A. To increase the number?

9 Q. Correct.

10 A. Yes. I would say that would be a fair assessment  
 11 that they were trying to do that.

12 Q. When you were serving with the Alabama Department  
 13 of Mental Health, did you believe the Department needed to  
 14 increase the number of Blacks serving in managerial  
 15 positions?

16 A. Increase?

17 Q. Correct.

18 A. No. I don't think I had that conscious thought  
 19 at all.

20 Q. When you were serving with the Alabama Department  
 21 of Mental Health, did you believe that the Department  
 22 needed to do a better job of having a diversified work  
 23 force?

24 A. Work force?

25 Q. Correct.

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 803/356-1990  
 800/923-8899

1 A. That they needed to do a better job?

2 Q. Correct.

3 A. I don't know if that was a stalwart. I felt that  
 4 we were doing a good job at the Department of having  
 5 representatives from the African American community in  
 6 managerial positions. I don't recall harboring any beliefs  
 7 that we needed to increase it in any shape, form or  
 8 fashion.

9 Q. Did you believe, though, that the Department  
 10 needed to ensure that it had African Americans serving in  
 11 managerial positions?

12 A. Do I believe that is important---

13 Q. Correct.

14 A. ---what they should have?

15 Q. Do you believe that's important?

16 A. I believe that's important.

17 Q. Did you believe that the Alabama Department of  
 18 Mental Health needed to increase the number of African  
 19 Americans?

20 MR. NIX: He has already answered that. I object  
 21 to the form.

22 A. I already answered that.

23 Q. During your employment history with the State of  
 24 South Carolina, to your knowledge, were any of the jobs  
 25 that you held, were you hired for those jobs pursuant to

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 800/923-8899

56

1 any Affirmative Action Program?

2 A. No.

3 MR. NIX: Were you asking South Carolina?

4 MR. MOZINGO: Correct.

5 BY MR. MOZINGO:

6 Q. Were you hired to work with the Alabama  
 7 Department of Mental Health pursuant to an Affirmative  
 8 Action Program?

9 A. Not that I am aware of, no.

10 Q. You stated that you were a Clinton administration  
 11 appointee?

12 A. That's correct.

13 Q. Are you involved in any political groups or  
 14 organizations?

15 A. No.

16 Q. You are not a member of any political groups or  
 17 organizations such as the Democratic Party?

18 A. No.

19 Q. Does your son -- I haven't asked you this. How  
 20 many children do you have?

21 A. Three sons.

22 Q. Is one of your sons currently working with the  
 23 Congressional Black Caucus in Washington, D.C.?

24 A. No.

25 Q. Did he ever?

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 803/356-1990  
 800/923-8899

1 A. I don't know. He may have.  
 2 Q. So one of your sons may have worked for that  
 3 organization?  
 4 A. Yes.  
 5 Q. Did one of your sons go through any type of  
 6 mentoring program or any type of development program  
 7 sponsored by the Congressional Black Caucus?  
 8 A. I don't know.  
 9 (Plaintiffs' Exhibit No. 5 was  
 10 pre-marked for identification.)  
 11 Q. Let me show you what's been marked as Plaintiffs'  
 12 Exhibit Five. I am going to let you look at that real  
 13 quick. Just look at the first paragraph and hand it back  
 14 to me. I only have one copy.  
 15 MR. NIX: First paragraph?  
 16 MR. MOZINGO: Yes. First paragraph.  
 17 A. Okay.  
 18 Q. This is a web page that's been downloaded that  
 19 quotes an Otha Dillihay, a director on the board at the  
 20 Palmetto Health Alliance stating "we are focusing  
 21 extensively in our marketing plan with technologies that  
 22 can help combat the AIDS epidemic, particularly in  
 23 diagnosing and treatment of AIDS on the African continent."  
 24 Is that a statement that you have given before?  
 25 A. I don't recall.

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 803/356-1990  
 800/923-8899

58

1 Q. You have had a chance to look at Plaintiffs'  
 2 Exhibit Five. Can you identify or explain to me what that  
 3 exhibit is talking about when it attributes a quote to you?  
 4 A. Which quote are you saying?  
 5 Q. That first paragraph, and there is a quote at the  
 6 bottom of it of the first paragraph that it attributes to  
 7 you.  
 8 A. Okay.  
 9 Q. What are they talking about? I couldn't get a  
 10 lot of information from that exhibit what they're talking  
 11 about.  
 12 A. I was involved with a company that was involved  
 13 with AIDS research, and they asked me to come on board and  
 14 help them put together the market plan and potentially  
 15 serve as C.E.O. of the company. The company was involved  
 16 with patents and market research and, not market, but  
 17 research, with anti-retroviral drugs on the African  
 18 continent. I believe I was with them just for that brief  
 19 period between just before I came to the Department of  
 20 Mental Health maybe three months.  
 21 Q. What type of consulting work were you doing with  
 22 that?  
 23 A. I was helping them with their marketing plan,  
 24 primarily their marketing and research to get the program  
 25 off the ground and launched.

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 803/356-1990  
 800/923-8899

1 Q. Was the company focusing on treating AIDS in  
 2 Africa or was it focusing on treating AIDS?  
 3 A. It was focused on treating AIDS, and we were  
 4 trying to get relationships with health clinics that were  
 5 already treating AIDS patients in Africa.  
 6 Q. Is the treatment of AIDS in Africa, is that a  
 7 subject that's near and dear to your heart?  
 8 A. I would say that.  
 9 Q. Is that a subject that you have special interest  
 10 in?  
 11 A. Yes. I think we all should.  
 12 Q. I would agree with you we all should be  
 13 interested in treating AIDS anywhere, but do you have a  
 14 special interest in the treatment of AIDS in Africa?  
 15 A. No. I have a special interest in treating AIDS,  
 16 period. But I think there is an overwhelming  
 17 representation of the virus on the African continent, and I  
 18 firmly believe that the cure is going to be connected to  
 19 where that disease is primarily focused.  
 20 Q. Did you have an opportunity when you were  
 21 associated with that company to travel to Africa?  
 22 A. No. I had an opportunity to travel. I chose not  
 23 to.  
 24 (Plaintiffs' Exhibit No. 6 was  
 25 pre-marked for identification.)

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 803/356-1990  
 800/923-8899

60

1 Q. I haven't asked you a lot about your personal  
 2 biographical information yet, and I am going to, but I am  
 3 just kind of working my way through some of these exhibits.  
 4 Let me show you Plaintiffs' Exhibit Six and get you to  
 5 identify that and let me know if you are a member of this  
 6 organization. It appears to be some type of Greek  
 7 organization.  
 8 A. A fraternity, yes.  
 9 Q. What is the name of that fraternity?  
 10 A. The name of the fraternity of which I am a member  
 11 is Kappa Alpha Psi Fraternity, Inc.  
 12 Q. What kind of fraternity is that?  
 13 A. It is a social fraternity.  
 14 Q. Were you affiliated with one of their chapters in  
 15 Montgomery?  
 16 A. Yes.  
 17 Q. Is that for one of their Montgomery chapters  
 18 there, that Plaintiffs' Five, can you tell?  
 19 A. I can't tell.  
 20 Q. First of all, do you see your name on Plaintiffs'  
 21 Exhibit Five?  
 22 A. Yes. That's what I'm looking for. Yes.  
 23 Q. You were affiliated with that fraternity's  
 24 chapter in Montgomery?  
 25 A. That's correct.

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 803/356-1990  
 800/923-8899



1 Q. Is that chapter located at Alabama State  
2 University?  
3 A. No.  
4 Q. Are you affiliated with that fraternity here in  
5 Columbia?  
6 A. Yes. I am.  
7 Q. Were you a member of that fraternity when you  
8 were in college?  
9 A. Yes.  
10 Q. And the name of it again?  
11 A. Kappa Alpha Psi.  
12 Q. Mr. Dillihay, what is your wife's name?  
13 A. Tanya.  
14 Q. Tanya Dillihay?  
15 A. Yes.  
16 Q. What does she do for a living?  
17 A. She's a physician.  
18 Q. What kind?  
19 A. Psychiatrist.  
20 Q. Where does she practice?  
21 A. She works for the Department of Mental Health  
22 here in South Carolina.  
23 Q. How long has she worked with them?  
24 A. I don't know. Since we moved here, I guess, off  
25 and on, more than 20 years.

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803/356-1990  
800/923-8899

62

1 Q. Does she also have her own practice?  
2 A. No.  
3 Q. So she practices exclusively with the Department  
4 of Mental Health?  
5 A. Yes.  
6 Q. And she's been doing that for 20 years or more?  
7 A. Since she became a physician.  
8 Q. How long have you lived here in Columbia?  
9 A. Since 1983.  
10 Q. Where did you live before?  
11 A. Nashville, Tennessee.  
12 Q. How long did you live in Nashville?  
13 A. Four years.  
14 Q. What were you doing there?  
15 A. Working.  
16 Q. With whom?  
17 A. University of Tennessee Nashville, Tennessee  
18 State University.  
19 Q. What were you doing with the University?  
20 A. I had a number of different roles. I was grants  
21 accountant for Tennessee State, and then when Tennessee  
22 State and UT Nashville came together, I worked for a group  
23 -- what was the name of it -- I am drawing a blank on the  
24 name. It was a group that operated out of the University  
25 that provided education and training for union memberships,

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803/356-1990  
800/923-8899

1 union affiliates.  
2 Q. Workers' unions?  
3 A. Workers' unions, yes.  
4 Q. But you were employed by the University system?  
5 A. Yes.  
6 Q. I guess from going over your resume earlier that  
7 would have predated your work with Bryan Psychiatric  
8 Hospital?  
9 A. That's correct.  
10 Q. Where did you grow up, Mr. Dillihay?  
11 A. Montgomery, Alabama, and Miami, Florida.  
12 Q. Where did you graduate from high school?  
13 A. Lanier High School.  
14 Q. What year?  
15 A. 1975.  
16 Q. Did you ever attend any colleges or university in  
17 the State of Alabama?  
18 A. Well, not as a four-year student, no. I mean I  
19 don't remember if in high school I took a college course  
20 somewhere. That certainly is something that I did.  
21 Q. Upon graduation from Lanier, you went to  
22 Morehouse College?  
23 A. That's correct.  
24 Q. In Atlanta?  
25 A. That's correct.

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803/356-1990  
800/923-8899

64

1 Q. You told me earlier you never graduated from  
2 Morehouse?  
3 A. Right. My aunt died. My aunt, who was putting  
4 me through school, passed away.  
5 Q. What did you do after you left Morehouse in 1979?  
6 A. I moved to Nashville and worked.  
7 Q. Did you leave Nashville to go to South Carolina  
8 State University?  
9 A. No. I left Nashville, moved here and went to  
10 University of South Carolina Law School.  
11 Q. How did you gain admission to South Carolina Law  
12 School if you had not graduated from undergraduate school?  
13 A. They asked me to fill out an application, I did,  
14 they accepted me, I looked for a job, I couldn't find one,  
15 I went to law school.  
16 Q. They accepted you even though you did not have an  
17 undergraduate degree?  
18 A. Yes, sir.  
19 Q. I have never heard of that happening before. Was  
20 that just part of their standards?  
21 A. Well, I don't know. They asked me. I  
22 participated in the summer program that they held there and  
23 went there and successfully completed it and they asked me  
24 to come to law school.  
25 Q. What type of summer program did you participate

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803/356-1990  
800/923-8899

1 in?  
 2 A. It was a summer program for first-year law  
 3 students.  
 4 Q. But they did not require an undergraduate degree?  
 5 A. I don't know what they required.  
 6 Q. You just know you were able to get in without  
 7 having an undergraduate degree?  
 8 A. That's right.  
 9 Q. Do any of your sons live in Alabama?  
 10 A. No.  
 11 Q. You told me you have three sons?  
 12 A. That's correct.  
 13 Q. What are their names and ages?  
 14 A. It's Otha, II. He's 25.  
 15 Q. What does Otha, II do?  
 16 A. He's an attorney.  
 17 Q. Where?  
 18 A. In Vienna, Austria.  
 19 Q. Does he work with a private law firm or is he  
 20 working there with the U.S. Government?  
 21 A. He works for a firm.  
 22 Q. A private law firm?  
 23 A. Yes.  
 24 Q. And your other sons?  
 25 A. My second son is Elliott, he's 22. He lives in

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 803/356-1990  
 800/923-8899

66

1 Charleston now.  
 2 Q. Is he working there?  
 3 A. He is.  
 4 Q. What does he do for a living?  
 5 A. I don't know what he is. He works for a  
 6 laboratory. He is a biology graduate from the Citadel and  
 7 does something in a lab.  
 8 Q. And your third son?  
 9 A. He recently graduated from high school. Adam.  
 10 He'll be attending college in the fall.  
 11 Q. Do you have any other children besides these  
 12 three sons?  
 13 A. No.  
 14 Q. Do you have any family still living in Alabama?  
 15 A. My brother. That I know of. And I probably have  
 16 some cousins or what have you.  
 17 Q. What is your brother's name?  
 18 A. Charles.  
 19 Q. What is his full name?  
 20 A. Charles Reginald Dillihay.  
 21 Q. How old is Charles?  
 22 A. I don't know. Forty-eight, forty-nine.  
 23 Q. What does Charles do for a living?  
 24 A. He runs a landscaping company that he owns and  
 25 operates and he drives a school bus for the school system.

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 803/356-1990  
 800/923-8899

1 Q. Montgomery County School System?  
 2 A. I don't know who they are. I don't know the name  
 3 of the school system. He lives in Montgomery.  
 4 Q. What is the name of his landscape company?  
 5 A. I don't know.  
 6 Q. Does he do anything else?  
 7 A. Yes. He cleans, has a janitorial component.  
 8 Q. What is the name of that business?  
 9 A. I don't know.  
 10 Q. Is Charles married?  
 11 A. I don't know. I know he has a wife but they are  
 12 separated. I don't know his married status.  
 13 Q. Do you know his wife's name?  
 14 A. Sylvia. I don't know what last name she goes by.  
 15 Q. Does Sylvia live in Montgomery?  
 16 A. As far as I know.  
 17 Q. Do you know what she does for a living?  
 18 A. No.  
 19 Q. Does Charles have any children?  
 20 A. Yes.  
 21 Q. Can you tell me the names of his children that  
 22 are 18 or over?  
 23 A. That are 18 and older?  
 24 Q. Correct.  
 25 A. Demetri, and I don't know her last name. And

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 803/356-1990  
 800/923-8899

68

1 Charles.  
 2 Q. Charles, Jr.?  
 3 A. I don't know if it's Jr. or what.  
 4 Q. What does Demetri do?  
 5 A. I don't know.  
 6 Q. Does she live in Montgomery?  
 7 A. I don't know.  
 8 Q. You don't know where she lives?  
 9 A. No.  
 10 Q. Do you know if she is married?  
 11 A. No.  
 12 Q. What does Charles do for a living?  
 13 A. My bother or my nephew?  
 14 Q. Your nephew.  
 15 A. I don't know.  
 16 Q. Does me live in Montgomery?  
 17 A. I don't know.  
 18 Q. Do you know if he's married?  
 19 A. I don't know.  
 20 Q. You no longer have a parent residing in Alabama,  
 21 is that correct?  
 22 A. Parent?  
 23 Q. A parent.  
 24 A. No.  
 25 Q. But your parents did reside in Montgomery at one

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 803/356-1990  
 800/923-8899

1 time?  
2 A. I believe they did when I was born there.  
3 Q. Are your parents deceased?  
4 A. Yes. They're both deceased.  
5 Q. Can you give me their names?  
6 A. Charles.  
7 Q. Charles, Sr.?  
8 A. No. Charles Elliott.  
9 Q. Dillihay?  
10 A. Yes. And Thelma Regina Dillihay. She remarried.  
11 Q. Who did she remarry?  
12 A. Milton was her married name.  
13 Q. And her second husband, what was his full name?  
14 A. Israel Milton.  
15 Q. Did they live in Montgomery when she remarried?  
16 A. No.  
17 Q. Where did they live?  
18 A. I am not sure.  
19 Q. Do you know if Israel Milton is from Alabama?  
20 A. No.  
21 Q. What year did your father pass away?  
22 A. I don't recall the year, but I was about seven  
23 years old.  
24 Q. Was he living in Montgomery at the time?  
25 A. He was.

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803/356-1990  
800/923-8899

70

1 Q. Do you know what he did for a living in  
2 Montgomery?  
3 A. Teacher.  
4 Q. Do you know where he taught?  
5 A. It was a school outside of Montgomery. I don't  
6 know the name of the school.  
7 Q. What did your mother do for a living?  
8 A. Teacher and guidance counselor.  
9 Q. Do you know what schools she worked in?  
10 A. No.  
11 Q. Did she work with the Montgomery County School  
12 System?  
13 A. Ever?  
14 Q. Yes.  
15 A. I don't know.  
16 Q. What was the last year that she lived in  
17 Montgomery?  
18 A. I don't know.  
19 Q. When she left Montgomery, did she move out of  
20 state?  
21 A. Yes. I guess.  
22 Q. Do you know by name any other relatives who live  
23 in Alabama other than the ones we have discussed?  
24 A. None others that I can really think of offhand.  
25 Q. Is your dad originally from Alabama?

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803/356-1990  
800/923-8899

1 A. My father?  
2 Q. Yes.  
3 A. Yes.  
4 Q. Was your mother originally from Alabama?  
5 A. No. She was from Florida, I believe.  
6 Q. So I guess there is an outside chance if there  
7 are other Dillihays in Alabama, you could possibly be  
8 related to them, is that correct?  
9 A. Yes. Correct.  
10 (Break from 11:20 to 11:30 a.m.)  
11 (Back on the record.)  
12 BY MR. MOZINGO:  
13 Q. Have you ever been sued before?  
14 A. Well, I am really not sure.  
15 Q. You know you are being sued in this lawsuit?  
16 A. Yes. I know that.  
17 Q. Other than this one?  
18 A. Well, I don't know. I don't have any  
19 recollection of anything on this order. There may have  
20 been a magazine subscription or something like that that I  
21 didn't pay when I was in college or something like that in  
22 Small Claims Court. Certainly nothing like this.  
23 Q. If you have been sued before, to the best of your  
24 knowledge, it would be in Small Claims Court, something  
25 like that?

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803/356-1990  
800/923-8899

72

1 A. Something minor.  
2 Q. So you have never been sued in Federal Court  
3 before?  
4 A. Not that I know of.  
5 Q. Have you ever testified before?  
6 A. Have I ever testified?  
7 Q. Testified like today you are giving testimony.  
8 Have you ever testified before?  
9 A. I gave a deposition once when -- sometime back in  
10 my career. I don't recall exactly what it was. I really  
11 don't recall which agency it would have been, but they  
12 called me in and asked me things that I knew about -- I  
13 don't know, I think it -- I don't know what it was. They  
14 just wanted to know if I had any knowledge of it. I was a  
15 witness that was called in.  
16 Q. So you testified one time?  
17 A. Yes.  
18 Q. And only once that you can recall?  
19 A. That I can recall, yes.  
20 Q. In that one time you were working with the State  
21 of South Carolina?  
22 A. I believe I was, yes. I don't know if it was  
23 Mental Health or DJJ. I was called to give a deposition as  
24 a witness.  
25 Q. Do you know what that lawsuit was about?

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803/356-1990  
800/923-8899

1 A. No.  
 2 Q. Was that lawsuit -- do you have a judgment as to  
 3 whether that lawsuit involved allegations of  
 4 discrimination?  
 5 A. I don't know.  
 6 Q. We covered earlier the fraternity that you're a  
 7 member of. Are you a member of any other organizations?  
 8 A. Active member currently, no.  
 9 Q. Or just a member.  
 10 A. Yes. Association of Pilots.  
 11 Q. Of what?  
 12 A. Pilots. AOPA, Association of -- Aircraft Owners  
 13 and Pilots Association. That is the only thing that I am  
 14 actively engaged in now.  
 15 Q. Any other organizations that you may be a member  
 16 of inactively?  
 17 A. I am still a member of Kappa Alpha Psi. That is  
 18 a college fraternity. You will be a member until you --  
 19 nothing else really.  
 20 Q. You are serving in the military, is that correct?  
 21 A. No.  
 22 Q. Or you have served?  
 23 A. No. I served in the State Guard here in South  
 24 Carolina.  
 25 Q. You served in the South Carolina National Guard?

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 803/356-1990  
 800/923-8899

74

1 A. State Guard.  
 2 Q. What years did you serve?  
 3 A. I went from -- I have to go back and look. Like  
 4 2000 -- I don't recall. Like 2000 to 2007.  
 5 Q. So in this decade you served?  
 6 A. Yes.  
 7 Q. How old are you, Mr. Dillihay?  
 8 A. I am 50.  
 9 Q. I didn't realize that the guard would allow  
 10 individuals in their fifties to join.  
 11 A. No. Not 50. I was 40 something. Our Governor  
 12 just joined the Air Force Reserves when he was in his  
 13 forties.  
 14 Q. The first time you served in the military would  
 15 be with the South Carolina State Guard?  
 16 A. My first service was as a PLT leader when I was  
 17 in college.  
 18 Q. With the South Carolina State Guard?  
 19 A. That was the Marine Corps.  
 20 Q. Have you ever served active duty military?  
 21 A. No.  
 22 Q. But you did serve with the Marine Corps while in  
 23 college?  
 24 A. For a brief period. I went through their PLT  
 25 program.

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 803/356-1990  
 800/923-8899

1 Q. Then after that, prior to joining the South  
 2 Carolina State Guard, did you serve with any military  
 3 organization?  
 4 A. No.  
 5 Q. And you joined the South Carolina State Guard  
 6 sometime in this decade?  
 7 A. That's correct.  
 8 Q. Why did you join the State Guard?  
 9 A. I wanted to serve.  
 10 Q. What capacity have you served?  
 11 A. I was attached to headquarters here in Columbia.  
 12 I served in a number of logistics to the G4 Public  
 13 Relations.  
 14 Q. Have you served exclusively in an administrative  
 15 capacity with the Guard?  
 16 A. Yes.  
 17 Q. So your service, I would assume then that your  
 18 administrative service has somehow involved some of your  
 19 skills or employment skills gained through your employment  
 20 experiences?  
 21 A. My administrative skills, yes.  
 22 Q. And your rank is what?  
 23 A. It was major. I am out now.  
 24 Q. So you have left. How many years did you serve  
 25 total?

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 803/356-1990  
 800/923-8899

76

1 A. Until last year. Seven or eight years.  
 2 Q. Did you receive an honorable discharge?  
 3 A. I believe they have me as inactive reserve as my  
 4 status now.  
 5 Q. So you are still a member then of the State  
 6 Guard?  
 7 A. That's correct.  
 8 Q. But in an inactive status?  
 9 A. That's correct.  
 10 Q. When you joined the Guard, did you have to, I  
 11 assume you went through basic training?  
 12 A. I went through training yes, I went through  
 13 officers' basic, officers' advance command and control  
 14 course.  
 15 Q. And your rank is?  
 16 A. Major.  
 17 Q. Have you ever served active duty while being a  
 18 member of the South Carolina State Guard?  
 19 A. No. Just on drill when we went to drill.  
 20 Q. So your guard unit has never been activated?  
 21 A. No.  
 22 Q. Who is your current employer?  
 23 A. Richland County School District Number One.  
 24 Q. Richland County School District Number One?  
 25 A. That's correct.

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 803/356-1990  
 800/923-8899

1 Q. Is there more than one?  
 2 A. Yes.  
 3 Q. How long have you been employed with the Richland  
 4 County School District?  
 5 A. Ever since September of '07.  
 6 Q. Did you work anywhere between the time you left  
 7 the Alabama Department of Mental Health and became employed  
 8 with the Richland County School District?  
 9 A. Yes.  
 10 Q. Where did you work?  
 11 A. Washington, D.C., for D.C. Government.  
 12 Q. For who?  
 13 A. D.C. Government. District of Columbia  
 14 Government.  
 15 Q. What did you do?  
 16 A. I don't know what they have my official title as,  
 17 but I was a consultant for -- and I don't know what the  
 18 term was, but it was their Disabilities and Special Needs  
 19 Department, and I provided, did a lot of work for them in  
 20 the area of Human Resource and Information Systems.  
 21 Q. What specific Human Resource training do you  
 22 have?  
 23 A. Specific Human Resource training?  
 24 Q. Correct.  
 25 A. Aside from the numerous seminars and training

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 803/356-1990  
 800/923-8899

78

1 that I have received in the various leadership forums that  
 2 I have been a participant of, I am a graduate of Leadership  
 3 South Carolina, South Carolina Executive Institute, Project  
 4 Blueprint, the Executive Leadership Institute that I  
 5 mentioned earlier.  
 6 Q. Because Human Resource involves a lot of, well,  
 7 it involves the whole gamut of employment.  
 8 A. Yes.  
 9 Q. And that includes not only employing, recruiting  
 10 and employing individuals, but it would also include the  
 11 payment of benefits, the payment of wages, salary, handling  
 12 terminations.  
 13 A. That's correct.  
 14 Q. Handling performance evaluations, is that  
 15 correct?  
 16 A. That's correct.  
 17 Q. And it would also include ensuring that the  
 18 employer complies with all applicable employment laws?  
 19 A. That's correct.  
 20 Q. Did you receive any Human Resource training at  
 21 any of the universities that you attended?  
 22 A. I suppose I did.  
 23 Q. Can you recall?  
 24 A. No. I don't recall my specific college schedule,  
 25 no.

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 803/356-1990  
 800/923-8899

1 Q. So the extent of your Human Resource training  
 2 would either be on-the-job training or in one of the  
 3 leadership seminars you participated in?  
 4 A. Quite possibly college. I know I had courses in  
 5 Human Resource Organizational Behavior and those types of  
 6 courses while I was in college and in graduate school.  
 7 Q. You did not receive a degree in Human Resource  
 8 Management?  
 9 A. No. My degree is in Business.  
 10 Q. That's not exactly the same as a degree in Human  
 11 Resource Management, is it?  
 12 A. No.  
 13 Q. So the nature and extent of your Human Resource  
 14 training and education would have come primarily through  
 15 work experience?  
 16 A. And my outside experience with the various groups  
 17 that I just mentioned and colleges and universities.  
 18 Q. And those various groups are?  
 19 A. The ones that I mentioned before. Like the South  
 20 Carolina Executive Institute.  
 21 Q. What is that?  
 22 A. South Carolina Executive Institute is a group  
 23 that's been established here, I believe they're in  
 24 affiliation with the University of South Carolina. Each  
 25 year they take a representative group of agency heads,

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 803/356-1990  
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80

1 senior management officials from both around the government  
 2 and private sector, and we spend the bulk of that year  
 3 studying things related to executive management positions  
 4 and the process intricacies of running large agencies here  
 5 in South Carolina.  
 6 Q. Did you attend the South Carolina Leadership  
 7 Institute on a part-time basis?  
 8 A. Yes. While I was working.  
 9 Q. Do you receive college credits for attending that  
 10 institute?  
 11 A. I don't recall. I wasn't attending the institute  
 12 for a college degree. But whether or not they offered  
 13 continuing education credits, I don't know.  
 14 Q. What else besides the South Carolina Leadership  
 15 Institute?  
 16 A. There is the South Carolina Executive Institute.  
 17 Q. What is that?  
 18 A. The one that I just spoke to. And then there is  
 19 Leadership South Carolina which is, I believe they have a  
 20 Leadership Alabama, they have a Leadership in practically  
 21 every state. This is comprised of public sector and  
 22 private sector executives, and again, we study the many  
 23 different components that it takes to run large  
 24 organizations for the benefit of improving the state and  
 25 its industries, so we spend a lot of time looking at things

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1 like manufacturing, what is involved in that, waste  
2 management systems, our environment, our state agencies'  
3 budgeting, all of the components of leading a large  
4 organization.

5 Q. Did the South Carolina Leadership Institute  
6 specifically have Human Resource seminars?

7 A. I don't recall exactly what they -- Human  
8 Resources was part of the training program. I don't know  
9 which ones, what their curriculum consisted of, but I do  
10 recall in those programs studying Human Resource  
11 Management.

12 Q. Was the South Carolina Leadership Institute  
13 similar to Leadership South Carolina in the way that the  
14 leadership program was formatted or conducted? What I am  
15 getting at is I have participated in leadership programs  
16 too, and at least the ones that I've participated in you  
17 may have an individual from a certain industry or  
18 government agency come speak about the needs affecting  
19 whether it be the state or---

20 A. No. It was a little more involved than that. We  
21 get case studies, we had reports we had to complete, we had  
22 projects that we worked on. We had professors who came  
23 down from Harvard and other universities including the  
24 University of South Carolina. This was a course  
25 curriculum.

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82

1 Q. The Leadership Institute?

2 A. Well, now there is South Carolina Executive  
3 Institute and then there is Leadership South Carolina.

4 Q. But the Executive Institute actually had a course  
5 curriculum?

6 A. Yes. I believe they both did.

7 Q. You believe they both did?

8 A. Yes.

9 Q. Did Leadership South Carolina have Human Resource  
10 courses or seminars?

11 A. Again, I don't recall their curriculum  
12 specifically, but I do recall taking course work in Human  
13 Resources.

14 Q. Besides those two entities that you have  
15 mentioned, have you attended any other leadership training  
16 programs?

17 A. Yes. Well, Project Blueprint, that was one also  
18 as a member of the American Association of Health Service  
19 Executives. I have attended numerous seminars on Human  
20 Resource and Hospital Management, Budgeting, Finance.

21 Q. So you feel like you have a lot of knowledge in  
22 the area of Human Resources?

23 A. It depends on what day you ask that question,  
24 Mr. Mozingo.

25 Q. I'm asking it today, Saturday, June 7, 2008.

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803/356-1990  
800/923-8899

1 A. I feel myself adequately prepared to hold the  
2 position of Chief Human Resource Officer for the school  
3 district that I work for. I feel that I am fully  
4 qualified.

5 Q. And that is your present capacity, Human Resource  
6 Officer?

7 A. Chief Human Resource Officer, yes.

8 Q. Richland County, explain to me how the school  
9 system is organized. I am not familiar like with the  
10 District One concept. Richland County is where Columbia is  
11 located, correct?

12 A. Yes.

13 Q. Columbia, South Carolina?

14 A. Parts of Columbia.

15 Q. Parts of Columbia.

16 A. Parts.

17 Q. Explain to me then generally how the school  
18 system in this county is organized.

19 A. Our system at Richland One?

20 Q. No. I want the big picture of the school system  
21 so I will understand where Richland One fits in the big  
22 picture.

23 A. I think first you have to have an understanding  
24 of Columbia. If we are talking about the Statistical  
25 Metropolitan Area that involves Columbia, not just talking

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803/356-1990  
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84

1 about those areas within the city limits. The SMA of  
2 Columbia encompasses Lexington, Saluda, Eastover, Pelion, a  
3 lot of different areas around what we know as Columbia. In  
4 Richland County there are several school districts.  
5 Richland County School District One is the largest of those  
6 school districts. It comprises of 50 schools from K  
7 through 12, adult programs, career development programs,  
8 those types of things.

9 We have over 23,000 students, we have  
10 approximately over four thousand employees, 2,200 teachers,  
11 and the balance of that is in support staff being operated  
12 by a Board of School Commissioners who is elected both at  
13 large and on a district basis throughout the county.

14 And Richland Two is a school district that  
15 if you took Columbia and took the city part of Columbia,  
16 that would be Richland One, and then if you took, say, from  
17 what are some of the outlying areas going back towards the  
18 Winnsboro city limit lines would be Richland Two, and then  
19 if you go to the west you have Lexington Four and Five, and  
20 then you also have a small combined district that was part  
21 of a planned unit development exercise from some time ago  
22 that is called Lexington-Richland and they have a number.

23 So you have got these school districts that  
24 kind of handle the periphery, and then you have got school  
25 districts that handles all of the schools that are sort of

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800/923-8899

1 proper. The Town of Columbia starts just as you cross the  
2 bridge and you enter the Town of Cayce. They're in another  
3 school district just across the bridge, it's one high  
4 school, but I believe they are in -- I don't know what  
5 Brookland-Cayce is in, but another school district.

6 Q. Were you appointed to serve as Human Resources  
7 Director or did you have to apply for that job?

8 A. I had to apply for the job and then the Board  
9 makes the appointment.

10 Q. Did you go through a recruitment process?

11 A. Yes.

12 Q. Do you know if you had any competition for that  
13 job?

14 A. I am sure I did. It's the Chief Human Resource  
15 Officer's job.

16 Q. The school is overseen by an elected board of  
17 directors?

18 A. That's correct.

19 Q. Is the superintendent for the school system  
20 appointed?

21 A. Yes. He is.

22 Q. Have you ever heard of the Superintendent's  
23 Cabinet?

24 A. Yes, sir.

25 Q. Are those individuals appointed?

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803/356-1990  
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86

1 A. I'm not sure how they are. I got there, they  
2 told me I was on the cabinet. We are struggling with that  
3 whole process of who is on cabinet and the new  
4 superintendent will have to devise his own cabinet  
5 structure. When I got there, the cabinet was already in  
6 place.

7 Q. Has the cabinet, has the makeup of the cabinet or  
8 the members of the cabinet changed at any time since you  
9 have been there?

10 A. Since I've been there, yes, sir.

11 Q. Has the size of the cabinet increased or  
12 decreased?

13 A. I would say it's roughly the same.

14 Q. Just members have changed?

15 A. Yes. One member passed away, and she certainly  
16 is not there anymore, and one member of the cabinet was  
17 assigned to run one of our middle schools while we search  
18 for a replacement principal.

19 Q. Do you have any say or participation in the  
20 selection of the cabinet members?

21 A. No.

22 Q. Are they selected by the Superintendent?

23 A. As far as I know.

24 (Plaintiffs' Exhibit No. 7 was  
25 pre-marked for identification.)

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1 Q. Let me show you what's been marked Plaintiffs'  
2 Exhibit Seven, and I just want to verify that, and I will  
3 represent to you this is a web page from the Richland One  
4 School District for the Office of Human Resources, and I  
5 just want you to verify that that is your office and you  
6 are the Otha Dillihay referenced on that exhibit.

7 A. That's correct.

8 Q. What is the racial makeup of the Richland One  
9 School District as far as student population?

10 A. I believe we are roughly 70 percent African  
11 American and 30 percent Caucasian and other. I believe  
12 that's the statistics. I am not a hundred percent accurate  
13 but it's roughly 75/30 or 70/30, something like that.

14 Q. More than a quarter of the student population of  
15 the Richland District One School District system is  
16 Caucasian or other?

17 A. I believe that's correct.

18 (Plaintiffs' Exhibit No. 40 was  
19 pre-marked for identification.)

20 Q. Let me show you what I am marking as Plaintiffs'  
21 Exhibit 40. I will represent to you that this is the web  
22 page -- and let me say this -- my printer doesn't do a good  
23 job of centering this, part of this web page is cut off,  
24 but this is the web page for the Richland One  
25 Administration which shows the Superintendent and his

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88

1 cabinet. There is a reference for Otha Dillihay but no  
2 picture. I don't think they got your picture in that one,  
3 Mr. Dillihay, is that correct?

4 A. I guess so.

5 Q. Is that the current cabinet?

6 A. No. This isn't all the members of the cabinet.

7 Q. Well, that's what the District One web site  
8 reflects.

9 A. I don't see Dr. Milt Marley on here. He is  
10 Interim Executive Director for Research and Development.  
11 And I don't see a lot of other things. These are the  
12 senior, some of the senior people but I wouldn't say that  
13 this is everyone.

14 Q. So the web site, your testimony is, that what I  
15 have downloaded from the District One web site does not  
16 reflect the true---

17 A. It may not be updated, yes.

18 Q. ---cabinet?

19 A. That's correct.

20 Q. Are there more cabinet members or just---

21 A. There are more cabinet members, but I can tell  
22 you off the bat I am missing an Executive Director of  
23 Schools who is not there, I don't believe she was there.  
24 No. I know the Executive Director for Research and  
25 Evaluation is not on there, so those two offhand I know are

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1 not accurate.

2 Q. The two that are not on there, are they White or

3 Black?

4 A. One is White. The other one I think is vacant

5 right now. That person, someone left to take another

6 position.

7 Q. The individuals that are on the web site, are

8 they still serving on the executive board?

9 A. On the executive board?

10 Q. I think that is what---

11 A. Are they still serving on the cabinet?

12 Q. Are they still serving on the cabinet?

13 A. Dr. Smith is not.

14 Q. Who replaced Dr. Smith?

15 A. No one.

16 Q. That is the vacant position?

17 A. No. That is the position where he went to take

18 the principalship of the school where the principal passed

19 away rather suddenly.

20 Q. By my count, at least from your web site of those

21 seven cabinet members, there is only one White out of the

22 seven cabinet members.

23 A. As I said, that's not accurate. Chief Operations

24 Officer was White. And now the person that is taking over

25 his duties and responsibility is White. The Executive

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90

1 Director for Research and Evaluation was Chinese and her

2 interim replacement was White that I recall. And I don't

3 know who will fill some of the other positions.

4 Q. Then does the makeup of the cabinet there, is it

5 consistent with your recommendations as you explained to me

6 earlier, at least from the topic of diversification that

7 you sometimes speak on, as part of that speaker's bureau,

8 is that makeup of that cabinet consistent with

9 recommendations you would give?

10 MR. NIX: I object to the form of the question.

11 You can answer it.

12 A. I think you are mixing things. What I was

13 speaking to earlier was if I am called to speak to a group

14 about its hospital system. Very different organization and

15 industry talking about hospitals and schools. There's a

16 lot of similarities, but what I was speaking to was what

17 does it take in my opinion to have diversification on your

18 board. This is a school system. Here again, we are

19 looking for different skill sets, looking for people that

20 have expertise in various components associated with

21 education. And while there is to be stakeholder

22 representation in the processes that school boards use to

23 make their decisions, I don't govern that. Those things

24 often times are a matter of law and election. I don't

25 govern who goes on the board and I don't govern who gets to

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803/356-1990  
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1 be selected for the Superintendent, and for the greatest

2 part I don't govern who the Superintendent elects to put on

3 or off his cabinet.

4 Q. I understand that, I understand, but your cabinet

5 that you have in this school district that you work for, is

6 that cabinet selected by the Superintendent of Education?

7 A. Again, we have been through a number of these. I

8 don't know how the cabinet members are selected. I have

9 been with the school board since September. So as far as

10 Richland County School District One, this is both a work

11 experience and a learning experience for me to see how

12 things happen through various programs. Our current

13 superintendent is leaving. We have a new superintendent

14 that is coming on board. I don't have any idea of how he

15 wishes to structure his organization, so all I can say is

16 when I got to Richland School District One, I was told I

17 was on cabinet, I went to cabinet meetings. I didn't ask

18 questions about how people got on there or who was on

19 there. I just did my part and went to the meeting.

20 Q. What does the cabinet do?

21 A. The cabinet listens to a number of different

22 things and issues related to the organization of the school

23 district. That involves curriculum and education, human

24 resource issues, issues as it relates to the management and

25 operations of its schools, matters of contract, matters of

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92

1 legal issues that the school district may be involved with,

2 our building project. We have just completed a massive

3 rebuilding or renovation of all our schools here in

4 Richland County, so we have zoning issues that we have to

5 discuss, issues related to our budget as it comes down from

6 both the State Department of Education and the county and

7 the city as they relate to the dispensation of after care

8 programs. It's just a huge amount of things that go

9 through cabinet.

10 Q. I was waving to interrupt you, because not that I

11 don't mean for you to finish your answer, but I think I

12 should have asked -- I was trying to ask a different thing.

13 That's my fault. I think what I meant to ask is: is the

14 cabinet serving in an advisory capacity to the

15 Superintendent?

16 A. I think you would have to ask the Superintendent

17 that.

18 Q. So as a member of the cabinet you do not know?

19 A. I don't know how the Superintendent views us.

20 Again, this is the Superintendent's cabinet. Not mine.

21 Q. I understand that, but you are a member. So I'm

22 asking as a member of the cabinet do you know if it serves

23 in an advisory capacity or not?

24 A. Are you asking me officially is that the mission

25 of the cabinet? I don't know that. Again, the cabinet was

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803/356-1990  
800/923-8899

1 something that was created by the Superintendent, not me.  
2 We do give advice to the Superintendent and the cabinet.  
3 There have been times he's listened to it and times when he  
4 has not. I can't sit here and tell you that as part of the  
5 mission of the cabinet that that advisory capacity is a  
6 component of their mission. The cabinet was set up when I  
7 got there. We do a number of things, and providing advice  
8 and giving our input into complex matters that will involve  
9 that school district, those discussions do take place in  
10 cabinet. But they don't stop there. We have higher  
11 authorities that we have to report to. We have a committee  
12 structure that the cabinet will provide information to the  
13 Board's CNI Committee, to their Facilities and Finance  
14 Committee, to their Administration Committee, and those are  
15 the bodies that actually make the -- affirm the  
16 recommendations, the appointments and review the advice  
17 that the Superintendent is providing for the board. Keep  
18 in mind that in this structure, the board has  
19 responsibility for the management and oversight of the  
20 district. The Superintendent is their chief employee and  
21 everyone else reports up to that person, but when it comes  
22 to the hiring authority, the board has to affirm those  
23 hirings, everyone from teachers to administrators. So each  
24 superintendent, I believe, has been granted broad latitude  
25 in how to structure their cabinet and how they are

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800/923-8899

94

1 utilizing that cabinet to run the school district.  
2 Q. My question is this: The cabinet that you serve  
3 on, does it function in an advisory capacity or some other  
4 capacity?  
5 A. I believe I have answered that.  
6 MR. NIX: I object to the form. It's  
7 duplicative.  
8 MR. MOZINGO: I got like a two minute or three  
9 minute response, so I just want to make sure I understand  
10 his response.  
11 BY MR. MOZINGO:  
12 Q. It does serve in an advisory capacity on some  
13 things, is that what you have said?  
14 A. I believe I answered that, Mr. Mozingo. I don't  
15 have -- listen, I can go and you can give me the mission  
16 statement for your law firm.  
17 Q. And I asked you---  
18 A. And maybe that, in that mission statement, it  
19 says that the group of senior partners provides advice. I  
20 can tell you if that is part of the statement.  
21 Q. Mr. Dillihay, I am not asking what your  
22 Superintendent's mission statement is. I am asking what  
23 you know.  
24 A. I am telling you.  
25 Q. The question is very simple. Does the cabinet

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1 function in an advisory capacity to your knowledge?  
2 A. I have answered that.  
3 MR. NIX: He's told you what he knows. He told  
4 you everything he knows.  
5 A. You can have the reporter read it back, but I  
6 have answered that.  
7 Q. Does the cabinet ever have final say on any  
8 decisions to your knowledge?  
9 A. Final say on any decisions?  
10 Q. Yes. Are there any decisions---  
11 A. Sure.  
12 Q. ---that the cabinet makes that are final?  
13 A. Sure. Should we take this to committee for  
14 information or action, what does the cabinet recommend. It  
15 depends on what it is. We may say yes, we may say no.  
16 It's still up to the Superintendent to make the decision.  
17 Q. You are familiar with the Job Evaluation  
18 Committee at the State Department of Mental Health?  
19 A. Yes.  
20 Q. Does the current Superintendent Cabinet with the  
21 Richland County School District that you are a member of,  
22 does it function in a similar capacity as the Job  
23 Evaluation Committee did at Mental Health in making  
24 recommendations?  
25 A. No.

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803/356-1990  
800/923-8899

96

1 Q. Does not function in a similar capacity?  
2 A. No.  
3 (Plaintiffs' Exhibit No. 8 was  
4 pre-marked for identification.)  
5 Q. Let me show you what's been marked as Plaintiffs'  
6 Exhibit eight, and that is your application with the  
7 Alabama Department of Mental Health for the position of  
8 Associate Commissioner for Administration?  
9 A. Yes.  
10 Q. Why did you apply for that job?  
11 A. Why did I apply for it?  
12 Q. Yes.  
13 A. One of the reasons I applied for it was I was  
14 looking to broaden my experience in senior management of  
15 state agencies, particularly mental health.  
16 Q. Are you saying that you did not have a  
17 sufficiently broad experience at the time you applied for  
18 that job?  
19 A. Not at all.  
20 Q. You needed to broaden it more?  
21 A. No, sir. I am always looking to expand my  
22 experience.  
23 Q. Any other reason that you applied for the job?  
24 A. Yes. I needed a job.  
25 Q. Well, that is good enough. I'm just asking.

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803/356-1990  
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1 What were you doing at the time you applied for that job?  
 2 Were you working anywhere or out of work?  
 3 A. Well, I probably was consulting during that  
 4 period that I applied. I was getting paid for serving on  
 5 various boards and . . . .  
 6 Q. Did you have your own consulting business?  
 7 A. I did it as a private contractor, yes.  
 8 Q. Generally what kind of consulting work were you  
 9 doing?  
 10 A. Government and health care consulting.  
 11 Q. Any specific areas of government or health care  
 12 consulting?  
 13 A. General administration, human resource  
 14 management, information systems, those types of things.  
 15 Q. Why did you not return to the South Carolina  
 16 Mental Health department?  
 17 A. Why did I not return to South Carolina---  
 18 Q. Why did you not return to them?  
 19 MR. NIX: What do you mean?  
 20 BY MR. MOZINGO:  
 21 Q. When we were going over your resume earlier your  
 22 this morning, going over your employment history, you had  
 23 left the South Carolina Department of Mental Health to go  
 24 to Juvenile Justice?  
 25 A. That's correct.

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 803/356-1990  
 800/923-8899

98

1 Q. And then you had a Presidential appointment?  
 2 A. No. I left -- I---  
 3 Q. Hold on one second. I'm sorry. I got out of  
 4 place. You're right. You were working with the South  
 5 Carolina Department of Mental Health and then you were  
 6 appointed Deputy Director in a gubernatorial administration  
 7 to work with Juvenile Justice?  
 8 A. That's correct.  
 9 Q. When that appointment ended, why did you not  
 10 return to the South Carolina Department of Mental Health?  
 11 A. Why didn't I return? I'd already left that job.  
 12 Q. Could you have returned though?  
 13 A. I didn't apply to go back to South Carolina  
 14 Department of Mental Health.  
 15 Q. At any time since leaving the South Carolina  
 16 Department of Mental Health in 1999, have you applied for a  
 17 position with that state agency?  
 18 A. Yes. I did.  
 19 Q. And you have not been hired---  
 20 A. No.  
 21 Q. ---to work with that state agency?  
 22 A. I applied while I was in Alabama for a position  
 23 that came open here.  
 24 Q. What position did you apply for?  
 25 A. I don't recall.

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 803/356-1990  
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1 Q. You can't recall?  
 2 A. No. It was a senior management position.  
 3 Q. You were not hired?  
 4 A. No. I was not.  
 5 Q. Did you apply for any other positions with South  
 6 Carolina Mental Health besides the senior management  
 7 position?  
 8 A. Well, it they may have had several positions that  
 9 were advertised and I may have applied for one or more of  
 10 those positions. I don't recall which ones I would have  
 11 applied for specifically, but I do know that when I was  
 12 attempting to leave Alabama that I sent out a number of  
 13 applications to seek employment and to have opportunities  
 14 to review for where I might work next, and the Department  
 15 of Mental Health here was probably one of those. I do  
 16 recall that I got a call for a couple of positions to  
 17 interview, but they were in community mental health centers  
 18 that were away from Columbia. My focus, as I told you, was  
 19 to be closer to my family.  
 20 Q. Were you ever called for an interview for any of  
 21 the jobs you applied for with the South Carolina Department  
 22 of Mental Health?  
 23 A. Yes.  
 24 Q. And those positions were in facilities outside of  
 25 Columbia?

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 803/356-1990  
 800/923-8899

100

1 A. Outside of Columbia, that's correct.  
 2 Q. Did you interview for those positions?  
 3 A. Yes.  
 4 Q. Were you offered employment?  
 5 A. I am not sure. I believe one I was, but I  
 6 decided -- I don't recall if it was South Carolina or  
 7 Georgia. I know they both were looking at me for a  
 8 position. On one I was offered a position and I didn't  
 9 take it, but it was doing the same sort of thing being the  
 10 executive director of a facility or a community mental  
 11 health center.  
 12 Q. So that was the job you would have applied for  
 13 then, is the executive director of a mental health  
 14 facility?  
 15 A. I believe that was one of them, yes.  
 16 Q. You would have interviewed for such a position  
 17 either with the State of Georgia or South Carolina?  
 18 A. I believe I interviewed with both.  
 19 Q. How many of such positions did you apply for?  
 20 A. I don't know.  
 21 Q. More than one?  
 22 A. Yes.  
 23 Q. But you only interviewed for, you were only given  
 24 an interview for one facility?  
 25 A. No. I was given an interview for I know at least

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 803/356-1990  
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1 two. There may have been others, but there were more  
2 interviews that I went on where I was offered positions  
3 outside of South Carolina.

4 Q. So you were offered some positions?

5 A. Some positions.

6 Q. Outside of South Carolina?

7 A. That's correct.

8 Q. Other than serving as a facility director, were  
9 you offered any other type of positions?

10 A. With any other organization?

11 Q. With any other state's organization?

12 A. Yes. I believe I was. But I don't recall  
13 exactly what they were at that time. There was one, I  
14 believe, in Baltimore with a firm. There was one in D.C.  
15 The company that -- I mean the organization that I was with  
16 in D.C. asked me if I would entertain staying there. There  
17 were several.

18 Q. But your testimony is that you wanted to return  
19 to Columbia?

20 A. That was my overriding concern was to get back to  
21 Columbia so that I could see my son through his senior year  
22 of high school.

23 Q. If you wanted to return to Columbia, why were you  
24 applying with other states or organizations that had job  
25 openings away from Columbia?

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803/356-1990  
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102

1 A. Again, some of the jobs that I applied for were  
2 very attractive positions elsewhere. I felt that it was  
3 something that I owed to myself as a professional to look  
4 at these opportunities to see where I might be able to  
5 help those organizations move ahead, and again, continue to  
6 broaden my professional experience, and I need a job just  
7 like anyone else.

8 Q. And the only job that was available for you to  
9 return to Columbia then would have been the position with  
10 the school district, is that correct?

11 A. The only one that I was interested in.

12 Q. The only one you were interested in?

13 A. That's correct.

14 Q. Did you apply for any positions, again, this is  
15 when you were leaving Alabama, did you apply for any  
16 positions with the South Carolina Department of Juvenile  
17 Justice?

18 A. I don't recall.

19 Q. What was your reason for leaving the position  
20 that you had in Alabama as Associate Commissioner?

21 A. My primary reason was to get closer to my family  
22 here in Columbia. I made no bones about it when I went to  
23 Alabama that that would be a temporary arrangement, that  
24 one of the things that attracted me to Alabama was the  
25 private nature of their community mental health centers.

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803/356-1990  
800/923-8899

1 That was something we had been trying to institute here in  
2 this state for a number of years. I was interested in that  
3 model and the delivery of service, and I felt that gaining  
4 some experience in that system would be helpful. The other  
5 thing that impressed me about Alabama was that they had  
6 just consolidated a huge number of their facilities and in  
7 the industry they did so, I felt, very successfully. There  
8 was not a lot of national fallout about the compression of  
9 facilities. I felt that they did so in a humane -- and it  
10 was a well-put-together plan, and then finally to be a part  
11 of an organization that had just successfully completed one  
12 of this nation's biggest class action lawsuit as it  
13 resulted to the treatment and care of patients was another  
14 thing that attracted me to that system. I felt that it was  
15 a system that was doing well and I felt that I could not  
16 only contribute but I could learn a lot from being a member  
17 of it.

18 Q. Who was the Commissioner of the Department of  
19 Mental Health when you applied?

20 A. Kathy Sawyer.

21 Q. Was Kathy Sawyer the Commissioner who hired you?

22 A. Yes.

23 Q. How long was it after you applied that you  
24 received a job from the Department of Mental Health?

25 A. Well, I am not sure. Actually I had spoken to

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803/356-1990  
800/923-8899

104

1 Mental Health a year prior to that about the position. But  
2 the State of Alabama was in a budget deficit and the  
3 Commissioner, I guess it was Commissioner, whoever, shared  
4 with me, I believe it was the Commissioner, that the  
5 governor was just not allowing them to hire for that  
6 position at that particular time.

7 Q. Was Kathy Sawyer the Commissioner that hired you?

8 A. Yes.

9 Q. Was she still the Commissioner when you began  
10 working with the Department?

11 A. Yes.

12 Q. When you were hired by Kathy Sawyer, were you  
13 hired with the understanding that you would only be there  
14 for a short time?

15 A. I wouldn't say it was an understanding. I felt  
16 that if I were going into a key position that it was  
17 important for me to share with them what some of my  
18 intermediate and long-range planning would be, so I spoke  
19 very candidly to the Commissioner and let her know that my  
20 family at the time we might consider moving to Montgomery,  
21 but it was a matter of looking at Montgomery to see whether  
22 or not it would be a good fit for my family, and depending  
23 on the outcome of that decision I would make my decision  
24 further out. I did commit to seeing that administration  
25 through its cycle which would have been two, two and a

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803/356-1990  
800/923-8899

1 half, three years, but I wouldn't just come there and next  
2 day leave, but that was more or less the balance of the  
3 conversation.  
4 Q. So you told Ms. Sawyer when you were hired that  
5 you would work at least for the term of that  
6 administration?  
7 A. Uh-huh.  
8 Q. And at any point beyond that I guess you would  
9 have to look at, at that time?  
10 A. Right.  
11 Q. That was the understanding you had with  
12 Ms. Sawyer when you were hired?  
13 A. That's correct.  
14 Q. Do you know if anyone else was hired for that  
15 position?  
16 A. Pardon?  
17 Q. Do you know if anyone else applied for the  
18 Associate Commissioner position?  
19 A. I don't know.  
20 Q. Do you know if you had any competition for that  
21 position?  
22 A. I don't know but I imagine I did.  
23 (Plaintiffs' Exhibit No. 9 was  
24 pre-marked for identification.)  
25 Q. Let me show you what's been marked Plaintiffs'

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803/356-1990  
800/923-8899

106

1 Exhibit Number Nine, and that is just a Central Office  
2 newsletter their reflects that you were, in fact, hired, is  
3 that correct?  
4 A. Yes.  
5 Q. Mr. Dillihay, how many people currently work in  
6 the Human Resources or the Central Human Resources Office  
7 with you with the Richland County School system?  
8 A. Richland County?  
9 Q. Or District One School System. I can't remember  
10 the specific name you gave me.  
11 A. At Richland One, I imagine it's, I don't know I  
12 have to go back and count. It should be somewhere around  
13 17 or 20.  
14 Q. Seventeen or twenty?  
15 A. I believe that's fairly accurate.  
16 Q. Are employed in the Central Office?  
17 A. That's correct.  
18 Q. When I say the Central Office, I am assuming that  
19 you were in the main office of the school system where the  
20 Commissioner has---  
21 A. That is correct.  
22 Q. ---where the Superintendent has his office?  
23 A. That's correct.  
24 Q. And there are 17 or 20 individuals?  
25 A. I believe somewhere in there.

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803/356-1990  
800/923-8899

1 Q. There are 17 or 20 individuals working in that  
2 office under you?  
3 A. Yes.  
4 Q. Are there Human Resource Officers in the  
5 individual schools?  
6 A. No, sir.  
7 Q. So for Richland County, the Human Resource  
8 function is entirely centralized in the main office, is  
9 that correct?  
10 A. Yes.  
11 Q. And your title with Richland County is Human  
12 Resources Director?  
13 A. No, sir.  
14 Q. What is your title?  
15 A. Chief Human Resource Officer.  
16 Q. Chief Human Resource Officer. Is there an  
17 Assistant Human Resource Officer---  
18 A. No.  
19 Q. ---working under you?  
20 A. No, sir. I have a Director of Classified  
21 Employment, and I have a Director of Certified Employment.  
22 And I have a recruiter that reports directly to me. They  
23 act as assistants for their respective areas.  
24 Q. What did you say the name of that third was, a  
25 recruiter?

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803/356-1990  
800/923-8899

108

1 A. Coordinator for Recruitment.  
2 Q. Coordinator for Recruitment. Coordinator for  
3 Recruiting, is that right?  
4 A. Recruiting. Or recruitment, I believe, is the  
5 word.  
6 Q. So there is no assistant position directly under  
7 you, instead there are three individuals that directly work  
8 under you, that is the Director of Classified Employment,  
9 Director of Certified Employment, and the Coordinator of  
10 Recruitment. Did I get that correct?  
11 A. Yes. And they serve as an assistant to me.  
12 Q. All three serve as an assistant to you, is that  
13 correct?  
14 A. That's correct. Those are their official titles.  
15 Q. Do those three individuals all exist on an equal  
16 employment level?  
17 A. No, sir. The two directors are on an equal  
18 salary scale, I believe, and the Coordinator for  
19 Recruitment is below the director's level.  
20 Q. So if I were to draw a pyramid you would be at  
21 the top as Human Resource Director, and then direct under  
22 you on the same level would be the two directors who both  
23 function as assistants, is that correct?  
24 A. That's correct.  
25 Q. And then under the two directors would be the

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803/356-1990  
800/923-8899

1 Coordinator?  
 2 A. No. The Coordinator does not report to the  
 3 Directors. The Coordinator reports to me. His function  
 4 has been classified as that of Coordinator.  
 5 Q. But all three functioned as your assistants?  
 6 A. That's correct.  
 7 Q. Did you hire the three individuals currently  
 8 working under you as assistants?  
 9 A. No.  
 10 Q. They were already there?  
 11 A. Yes.  
 12 Q. So you haven't hired any of the three then?  
 13 A. No, sir. They were there when I got there.  
 14 Q. All three were there?  
 15 A. Yes, sir.  
 16 (Plaintiffs' Exhibit No. 10 was  
 17 pre-marked for identification.)  
 18 Q. Let me show you what's been marked Plaintiffs'  
 19 Ten. This is a form 13P. I have also known these to be  
 20 called form 40's. I don't know why this doesn't say form  
 21 40, but it looks exactly like form 40's I have seen before  
 22 used by the State, but it's a form 13P, and up at the top  
 23 you will see where it says preappraisal?  
 24 A. Yes.  
 25 Q. And then in the box it has responsibilities.

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 803/356-1990  
 800/923-8899

110

1 Would it be true, and this is a two-page document, and for  
 2 responsibilities it lists eleven items. Do you see that?  
 3 A. Yes.  
 4 Q. Does that reflect the duties and responsibilities  
 5 you had with the Department of Mental Health when you were  
 6 employed as Associate Commissioner?  
 7 A. It reflects some of those duties.  
 8 Q. Some of them?  
 9 A. Yes, sir.  
 10 Q. Did you have duties that are not listed here?  
 11 A. I imagine I did. My duties were very broad.  
 12 These three appraisals were developed for the purpose of  
 13 getting employees through their initial appraisal period,  
 14 and I would imagine, and the way I have used this document  
 15 in the past was to give the individual an opportunity to  
 16 demonstrate to me on a broad level their capacity to  
 17 successfully do the job that they were hired for, but I  
 18 don't believe that these preappraisals encompassed the  
 19 total job responsibilities, not only for this one, but any  
 20 job.  
 21 Q. But if my understanding of how this process works  
 22 is correct, this form 13P would not have been filled out by  
 23 you, it would have been filled out by your supervisor, is  
 24 that correct?  
 25 A. I believe they may have done it a number of ways.

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 803/356-1990  
 800/923-8899

1 This one was filled out by my supervisor. I have seen some  
 2 that have been done in conjunction with employee input.  
 3 Q. Who filled out Plaintiffs' Exhibit Ten?  
 4 A. I don't recall. I believe it may have been  
 5 Commissioner Sawyer.  
 6 Q. Did Commissioner Sawyer prepare this on her own  
 7 or in conjunction with your input?  
 8 A. I am not sure. I don't recall.  
 9 Q. Does this Plaintiffs' Exhibit Ten, though,  
 10 accurately reflect your general duties and responsibilities  
 11 with the Department when you were hired?  
 12 A. Yes. I believe they do.  
 13 Q. If you will look on the second page there are a  
 14 couple of signatures?  
 15 A. Yes, sir.  
 16 Q. Is the bottom signature yours?  
 17 A. Yes, sir.  
 18 Q. The one above it, do you know whose signature  
 19 that is?  
 20 A. I can't make it out, but it looks like it may be  
 21 Commissioner Sawyer's.  
 22 Q. The way this form would have worked is  
 23 Commissioner Sawyer would have given you this form, would  
 24 have explained the duties and responsibilities that you  
 25 will be appraised?

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 803/356-1990  
 800/923-8899

112

1 A. Yes, sir.  
 2 Q. And then at the appraisal time your appraisal  
 3 would be based on your fulfillment of the duties and  
 4 responsibilities set forth in this form?  
 5 A. On the mid-appraisal. This is something that, if  
 6 I am looking at it correctly, this is the preappraisal that  
 7 is done prior to the evaluation process. It looks like  
 8 this one may have been my preappraisal for my mid-term  
 9 evaluation to determine if after a certain period of time I  
 10 was performing adequately to continue my duties.  
 11 Q. But we do know then that at some point, I guess  
 12 what I take from that, your answer, at some point during  
 13 your service with the Department of Mental Health,  
 14 Plaintiffs' Exhibit Ten would reflect your duties, general  
 15 duties and responsibilities at that point in time?  
 16 A. Generally, yes, sir.  
 17 Q. And the point in time would be from June 2004  
 18 until November 2004?  
 19 A. That is what it says on the form.  
 20 (Plaintiffs' Exhibit No. 11 was  
 21 pre-marked for identification.)  
 22 Q. Let me show you what's been marked Plaintiffs'  
 23 Exhibit 11. This is a letter dated July 22, 2005,  
 24 confirming your transfer from Associate Commissioner in the  
 25 Division of Administration to Associate Commissioner in the

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 803/356-1990  
 800/923-8899

1 Division of Mental Illness, is that correct?  
2 A. Yes.  
3 Q. Did such a transfer occur?  
4 A. Yes, sir.  
5 Q. Why did it occur?  
6 A. We were experiencing problems in our Mental  
7 Illness Division, we were losing a huge amount of cash.  
8 The person that we had sitting in an interim basis wasn't  
9 getting done, and these are my words, not the  
10 Commissioner's words, what we felt needed to get done and  
11 might need some help in getting it done.  
12 Q. Were you originally hired to serve as the  
13 Associate Commissioner in the Division of Administration?  
14 A. Yes.  
15 Q. What administrative divisions did you oversee in  
16 that job?  
17 A. What departments?  
18 Q. Right. Thank you very much for saying that. I  
19 want to make sure I am clear. When we refer to the  
20 Department of Mental Health, there are many offices in that  
21 Department such as Personnel?  
22 A. Right.  
23 Q. And I think Information Technology may be one?  
24 A. Right.  
25 Q. Did you refer to those as departments, divisions

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803/356-1990  
800/923-8899

114

1 or offices?  
2 A. I think that the reference to those areas were  
3 used interchangeably. The Department, and I don't recall,  
4 but I believe that by statute as it was set up, had certain  
5 bureaus that it referred to in the statute. Of course  
6 bureau carries a connotation of a larger organization, that  
7 is a piece of a whole that would have broad policy making,  
8 broad authority to invoke change or policy in a particular  
9 organization. We were not functioning that way. We did  
10 not function as the Federal Bureau of Investigation that is  
11 part of the Justice Department. We functioned more as a  
12 division, and what is under that division you had -- again,  
13 these are general terms -- departments or offices. Human  
14 Resources, Information Systems, Contracts, Supply, whatever  
15 they may be. So because part of the descriptions that you  
16 see on the internet and you see in the code refers to  
17 certain functions by a name, those names have either been  
18 overtaken by the evolution of that particular activity or  
19 the function of it would not be one that if you went to a  
20 definition of a specific term like office or division or  
21 bureau, that it would fit the strict definition.  
22 Q. I am going to be asking you about those different  
23 bureaus or departments, and I want you and me to agree on a  
24 word that we are going to call them so we'll both know what  
25 we're talking about. Should I refer to them as departments

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803/356-1990  
800/923-8899

1 or bureaus or offices?  
2 A. Well, you know.  
3 Q. For purposes of this testimony today so you and I  
4 will be on the same page.  
5 A. Let me tell you how I categorize. The Division  
6 of Administration, the Division of Mental Illness, the  
7 Division of Mental Retardation, the Division of Substance  
8 Abuse. Under those divisions we had different departments.  
9 Information Systems, that I would refer to as a department.  
10 I would refer to Human Resources as a department. But we  
11 also had certain functions, and we didn't really have a  
12 title for them, but the person that handled within our  
13 construction management piece, Eric, I forget his last  
14 name, I would consider what he did as part of an office  
15 related to those things. There wasn't a specific term set  
16 up, I don't think you could go to the organizational chart,  
17 but for purposes of discussions that's the way I kind of  
18 look at it.  
19 You have a division that has a broad  
20 responsibility over a lot of different areas. Those areas  
21 are representative of what I would call a department, and  
22 if there were singular activity like following construction  
23 management or maintenance or something like that, I would  
24 refer to that as an office.  
25 Q. Mr. Dillihay, while you have been serving as

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803/356-1990  
800/923-8899

116

1 Chief Human Resource Officer for the District One Richland  
2 County School System, have you at any time requested that a  
3 position of Assistant Human Resource Officer be created?  
4 A. No, sir.  
5 Q. Going back to these departments, that is how we  
6 are going to label Human Resources, because I am going to  
7 be asking about Mr. Ervin's department.  
8 A. All right.  
9 Q. Let's use that word, department, and I think you  
10 and I will know what we are talking about.  
11 A. Okay.  
12 Q. When you were responsible for the Division of  
13 Administration, what departments worked under you or were  
14 under you?  
15 A. I have to go back and look specifically, but I  
16 can tell you they were the areas that dealt with Finance,  
17 Accounting, that dealt with Medicaid Administration, that  
18 dealt with Contracts, that dealt with our Construction  
19 Management and Land Assets, Human Resources, and then we  
20 had internal components that dealt with Supply and  
21 Services, Copying and those sorts of things.  
22 Q. Let me make sure I understand. Again, I am not  
23 going to hold you to the official name of the department,  
24 but we had a Finance/Accounting Department that you were  
25 responsible for, correct?

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803/356-1990  
800/923-8899

1 A. Ultimately, yes. When I came on board, the way  
2 that the department was set up was Kathy had the Finance  
3 Officer reporting directly to her. That changed when John  
4 took over. I don't know when, but he made the decision to.  
5 But while I was on board, although Kathy was on the org.  
6 chart as heading up the Office of Finance, my relationship  
7 for the signing of the people when they went on leave, the  
8 planning that went into the administrative management, they  
9 came to me and we had a working relationship. I would  
10 receive their advice and tell them which direction I felt  
11 we needed to go in. Kathy and I had always talked about  
12 making that official change. Like many things that got  
13 overtaken by events, it didn't happen, I don't believe,  
14 until John actually took over is when they made that  
15 official change in my job description.

16 Q. When you say John, are you referring to John  
17 Houston?

18 A. Right.

19 Q. When did he take over?

20 A. I don't know. I know Kathy retired and John was  
21 appointed interim.

22 Q. But at some point while you were Associate  
23 Commissioner in the Division of Administration, you were  
24 responsible for the Finance/Accounting Department?

25 A. That's correct.

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803/356-1990  
800/923-8899

118

1 Q. You were responsible for the Medicaid Department?

2 A. That I handled, yes, and I am getting some things  
3 mixed up. I don't know if we had Medicaid in Alabama. We  
4 did have Medicaid monies, but I am not sure if they went  
5 through our finance office. I would have to go back and  
6 look at what the org. chart was, but we dealt with Medicaid  
7 in Alabama and that was one of the responsibilities of  
8 Finance.

9 Q. You would have been responsible for the Contracts  
10 Department, and it may not have had that name but---

11 A. Yes.

12 Q. You would have served in that function, would  
13 that be correct?

14 A. That is correct.

15 Q. You were responsible for the Construction  
16 Department. Again, it may not have that name but it might  
17 carry out that function, is that correct?

18 A. That's correct.

19 Q. You were responsible for the Human Resources  
20 Department?

21 A. That's correct.

22 Q. And you would have been responsible for the  
23 Information or Information Technology Department?

24 A. Yes.

25 Q. All of those would have fallen within your

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803/356-1990  
800/923-8899

1 purview as Associate Commissioner in the Division of  
2 Administration?

3 A. Yes.

4 Q. When you were transferred to be Associate  
5 Commissioner in the Division of Mental Illness, did the  
6 departments I just named continue to fall under your  
7 purview when you were the Commissioner in the Division of  
8 Mental Illness?

9 A. No.

10 Q. Who replaced you as Associate Commissioner in the  
11 Division of Administration when you were transferred to  
12 Mental Illness?

13 A. I believe it was June Lynn.

14 Q. Who is June Lynn?

15 A. She was the Executive Assistant to the Associate  
16 Commissioner for Administration.

17 Q. Did you replace the Associate Commissioner in the  
18 Division of Mental Illness?

19 A. Did I replace?

20 Q. Correct.

21 A. We had Paul Bisbee, I believe that was his name,  
22 was Interim Associate, and I went over and took over as  
23 Interim Associate.

24 Q. Was Paul in a similar position as Lynn in the  
25 sense he was serving as Assistant Associate Commissioner?

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803/356-1990  
800/923-8899

120

1 A. No. He was not serving as Executive Assistant.  
2 Paul was in charge of Facilities, Director of Facilities at  
3 the time.

4 Q. How many divisions were there with Mental Health  
5 when you were there?

6 A. How many divisions?

7 Q. Right. We know from this letter we have  
8 Administration and we have Mental Illness.

9 A. Mental Retardation and Substance Abuse.

10 Q. Four divisions then?

11 A. Yes, sir.

12 Q. Does that mean there would have been or ideally  
13 you would have had four Associate Commissioners?

14 A. Yes. I believe.

15 Q. Each Commissioner would be in charge of a  
16 division?

17 A. Yes.

18 Q. When you were working as Associate Commissioner  
19 of Mental Illness, was June Lynn serving in a capacity as  
20 Associate Commissioner without being a true appointed  
21 Associate Commissioner?

22 A. I think they actually made her Interim Associate  
23 Commissioner for Administration. I believe there were  
24 letters that were generated like this for June, because  
25 again, we have a tremendous amount of responsibility,

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803/356-1990  
800/923-8899



1 there's signatory authority, there's legislative agencies  
2 that we had to report to, so to make things official and  
3 keep things official she was appointed as Associate  
4 Commissioner for Administration.

5 Q. Does an Interim Commissioner serve until a  
6 permanent commissioner can be appointed?

7 A. Generally that's what happens.  
8 (Plaintiffs' Exhibit No. 12 was  
9 pre-marked for identification.)

10 Q. Let's me show you Plaintiffs' 12. This is a  
11 preappraisal for the period of April 2005 to April 2006, is  
12 that correct?

13 A. That is what it looks like, sir.

14 Q. I will represent to you, Mr. Dillihay, the two  
15 exhibits that we have marked, the two preappraisals, are  
16 the only two that have been produced to me. If there are  
17 others, I don't have them and I don't know about them. Do  
18 you know of any preappraisals other than those two?

19 A. I don't know. I need to check the personnel  
20 files. They should be in there.

21 Q. The Plaintiffs' Exhibit 12 that I have handed  
22 you, again, that would reflect your duties and  
23 responsibilities for the period covered by that  
24 preappraisal, is that correct?

25 A. Again, what this is, it is a general description

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803/356-1990  
800/923-8899

122

1 of the duties and responsibilities. This preappraisal  
2 again is used to focus on those things that will be  
3 appraised in the evaluation process for that period. So  
4 they are not always the same in every case and in other  
5 cases they are always the same.

6 Q. I understand they can change from period to  
7 period. I understand that. But my question is for the  
8 time period covered by this preappraisal, were those your  
9 general duties and responsibilities?

10 A. They were part of my general duties and  
11 responsibilities.

12 Q. Does this preappraisal that's been marked  
13 Plaintiffs' Exhibit 12 represent the majority of your  
14 duties and responsibilities for that time period?

15 A. I don't know if they were the majority of what I  
16 did.

17 Q. Are you testifying then that you did not receive  
18 an appraisal on many of your duties and responsibilities?

19 A. Oh, no, sir. I am not testifying to that at all.  
20 I am testifying that that is not the total job  
21 responsibility that I was hired to do as Associate  
22 Commissioner, that there were others.

23 Q. Did you ever receive a preappraisal or an  
24 appraisal on the other duties that aren't reflected on  
25 these exhibits?

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803/356-1990  
800/923-8899

1 A. I don't know. I don't think the appraisal  
2 process is set up to appraise every duty. It's used in  
3 different ways for different people. If you are using it  
4 for a highly skilled very productive employee you use it to  
5 focus on what you want to see accomplished in any  
6 particular period of time. The substandard employee is  
7 what you want to focus on to help them improve so they can  
8 be a good employee, so the appraisal process is one of the  
9 period of time that you are evaluating a person for, for  
10 what that particular manager would like to get accomplished  
11 for that particular period of time for that specific  
12 employee. But different people use the appraisals in a  
13 different way.

14 What I am saying to you is that if you read  
15 everything on there and you go to the Associate  
16 Commissioner for Administration those points aren't going  
17 to be everything that that person is asked to do. There  
18 are others, there are many others. But this is what I was  
19 going to be evaluated on for that period of time.

20 Q. So as I understand it, then, for that period of  
21 time your evaluation would be based on the duties and  
22 responsibilities set forth in the preappraisal?

23 A. Yes.

24 Q. Which may not be inclusive of all of your duties  
25 and responsibilities?

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803/356-1990  
800/923-8899

124

1 A. Yes.

2 Q. Which likewise would mean, if it's not inclusive  
3 that there would be duties and responsibilities that you  
4 were not evaluated on for that period of time?

5 A. For that period of time, yes, sir.

6 (Plaintiffs' Exhibit No. 13 was  
7 pre-marked for identification.)

8 Q. Let me show you what's been marked Plaintiffs'  
9 Exhibit 13. Can you identify that for the jury?

10 A. Yes. It's an e-mail from me to John Houston  
11 where I resigned my commission, my appointment as  
12 Commissioner for Administration.

13 Q. Had you been offered employment for another job  
14 at the time you sent this e-mail?

15 A. I don't know.

16 Q. Is it possible?

17 A. Yes.

18 Q. Had you interviewed for other jobs prior to  
19 sending this e-mail?

20 A. Yes.

21 Q. Did you send this e-mail in order to take another  
22 job?

23 A. I sent that e-mail to resign my commission.

24 Q. Correct. Did you resign your commission in order  
25 to take another job?

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803/356-1990  
800/923-8899

1 A. I resigned my commission to I could orchestrate a  
2 way to get closer to my family.  
3 Q. Had you accepted employment with another employer  
4 at the time you resigned your commission?  
5 A. No.  
6 Q. Had you been offered employment with another  
7 employer at the time you resigned your commission?  
8 A. I believe that I had been.  
9 Q. Who was that?  
10 A. I don't recall. As I said, I sent out a number  
11 of applications to a number of different organizations.  
12 Some I interviewed with and were offered employment that  
13 was not going to be a good fit for me.  
14 Q. Had you been offered employment with the Richland  
15 County School District at the time you resigned as  
16 Associate Commissioner?  
17 A. No.  
18 Q. It's your testimony that you left or you resigned  
19 as Associate Commissioner with Alabama Department of Mental  
20 Health in order to be nearer to your family?  
21 A. That was one of the reasons. The other reason  
22 was to, you know, again, get another job doing something  
23 that I felt would help me broaden my experiences and  
24 participate in helping organizations move forward. I felt  
25 that the work I had done in Alabama had helped move that

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

126

1 system ahead and I was ready to move on.  
2 Q. Did anyone ask you to resign as Associate  
3 Commissioner for Administration?  
4 A. I wouldn't say asked. John and I had numerous  
5 conversations about me leaving and when it would be time  
6 for me to leave.  
7 Q. Did John Houston want you to leave?  
8 A. You have to ask John that question.  
9 Q. Did he ever tell you that he wanted you to leave?  
10 A. I don't know those words specifically, but we  
11 have talked about me leaving on a number of different  
12 occasions.  
13 Q. Did John Houston ever ask you to resign?  
14 A. No.  
15 Q. Did John Houston ever give you the impression  
16 that he wanted you to resign?  
17 A. I got the impression from John that he wanted to  
18 put his leadership team together the way that he wanted to  
19 the same way I have had conversations with the Secretary of  
20 HUD and the Commissioner for Juvenile Justice and other  
21 jobs that I have been. Part of my responsibilities as an  
22 appointee in that process is realizing that these  
23 appointments do carry from administration to  
24 administration. When the Clinton administration was  
25 changing over from the first term to second term I didn't

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803/356-1990  
800/923-8899

1 want to be a part of the second term like many other  
2 appointees; so John and I talked about that. It was no  
3 secret around the department, I don't believe, that I was  
4 ready to leave or that, rather, that I was not going to be  
5 with the Department for a lengthy period of time.  
6 Q. Did John Houston ask you to stay with the  
7 Department?  
8 A. No.  
9 Q. Did John Houston give you the impression that he  
10 wanted you to leave?  
11 A. I believe I have answered that.  
12 Q. Did John Houston give you the impression that he  
13 did not want you to continue to be a part of his management  
14 team?  
15 A. I believe I have answered that.  
16 Q. No, you haven't answered that.  
17 A. I thought I had.  
18 Q. You haven't.  
19 MR. MOZINGO: The record will speak for itself  
20 and if we're confused I can certainly ask him the question  
21 again.  
22 A. I believe what I said was---  
23 Q. Let me reask the question. Did John Houston give  
24 you the impression that he did not want you to continue to  
25 be a part of his management team?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

128

1 A. John Houston gave me the impression that he  
2 wanted to structure his management team the way that he  
3 wanted to structure. I did not want to be an impediment to  
4 that process, to John, or any other government official  
5 that is responsible for running a state agency. Now  
6 whether John liked me or didn't like me, whether he wanted  
7 us to stay, as I said, we, over the course of a number of  
8 conversations, talked about the fact that I would not be in  
9 Alabama with the Department of Mental Health much longer.  
10 Q. Did you have the feeling that John Houston did  
11 not want you to be a part of the management structure that  
12 he wanted?  
13 A. I don't know what feeling I would have had. That  
14 was a long time ago, Mr. Mozingo, and as I said, my  
15 feelings personally was what could I do to get closer to my  
16 son who was finishing his senior year of high school. I  
17 spent a number of months in Alabama commuting back and  
18 forth between Montgomery and Columbia almost every weekend.  
19 That was my overriding feeling when I decided to leave the  
20 Department.  
21 Q. Did you feel compelled to leave the Department?  
22 A. I felt, yes, I wanted to get closer to my family.  
23 I felt absolutely compelled to leave the Department.  
24 Q. When you came to Alabama your permanent residence  
25 was still in South Carolina?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. That's correct.  
2 Q. And during the whole period that you worked at  
3 Alabama Department of Mental Health your permanent  
4 residence was still in South Carolina?  
5 A. That's correct.  
6 Q. Did you have a home or apartment in Montgomery?  
7 A. I had an apartment there.  
8 Q. Only you lived there?  
9 A. Yes.  
10 Q. And your family continued to live in South  
11 Carolina?  
12 A. That's correct.  
13 Q. When you were working in Washington, DC., did you  
14 have a home or apartment there?  
15 A. Yes, sir.  
16 Q. You had an apartment?  
17 A. Well, in Falls Church, Virginia.  
18 Q. Did your family ever move to Virginia?  
19 A. No, sir.  
20 Q. During your career, whether it be working in  
21 Washington, Montgomery, South Carolina, or anywhere else,  
22 has your family continued at all times to live in Columbia,  
23 South Carolina?  
24 A. Yes.  
25 Q. So your wife and your kids never followed you to

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

130

1 any one of these different jobs you may have had out of  
2 state?  
3 A. Affirmative.  
4 Q. Is that true?  
5 A. That is true.  
6 Q. When you were the Associate Commissioner of  
7 Administration, what was your involvement with the  
8 Personnel Department?  
9 A. My involvement?  
10 Q. Yes. Did you have any involvement?  
11 A. Yes. I supervised that department.  
12 Q. What type of supervision did you provide, did you  
13 provide daily hands-on supervision or just general  
14 oversight?  
15 A. It was a general oversight at times and daily  
16 hands-on at times. Depending on what the circumstance was.  
17 Q. Can you give me some circumstance where it was  
18 daily hands-on?  
19 A. Yes, sir. When we were dealing with the issue of  
20 the conversion from 26 to 24 pay periods and why that  
21 calculation would be made and how it would affect a huge  
22 class of our employee base.  
23 Q. Any other examples besides the pay period  
24 conversion?  
25 A. Yes, sir. When we were trying to develop an

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803/356-1990  
800/923-8899

1 analysis for the percentage of work force that may be  
2 retirement eligible at any particular time.  
3 Q. Henry Ervin was the person responsible for that  
4 department?  
5 A. Yes.  
6 Q. Correct?  
7 A. He was.  
8 Q. And Mr. Ervin answered to you?  
9 A. Yes.  
10 Q. What were the lines of communication between  
11 Mr. Ervin and the Commissioner, or let me ask it this way:  
12 Would the lines of communication between Mr. Ervin and the  
13 Commissioner go through you?  
14 A. Well, it depended on what the situation was.  
15 Commissioners have authority and are responsible for every  
16 employee that works for the Department of Mental Health.  
17 Depending on what the issues were the Commissioner may want  
18 to speak with Henry directly. Oftentimes we sent memoranda  
19 or correspondence through me, so it would really depend on  
20 what that particular circumstance and who that particular  
21 Commissioner was, but I do know that Henry met with the  
22 Commissioner on a regular basis, both Commissioner Sawyer  
23 and Commissioner Houston.  
24 Q. You realize this is a lawsuit in which you have  
25 been named a defendant concerns the creation of the

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

132

1 position of -- I am going to do the same thing your  
2 attorney did -- we had trouble getting the name of the  
3 position down in the prior deposition. This lawsuit  
4 concerns the creation of the---  
5 MR. NIX: Departmental Assistant Personnel  
6 Manager.  
7 BY MR. MOZINGO:  
8 Q. Departmental Assistant Personnel Manager. What  
9 was your involvement in the creation of that position?  
10 A. Well, I am not quite sure. I do recall that I  
11 was involved both in the discussion about the need for the  
12 position, I was also -- you know, I signed off on various  
13 paperwork that was involved, but this was also done during  
14 my transition time, so my involvement was along those  
15 lines, why do we need one, what would it do, how would we  
16 go about funding the position, how would we get the  
17 position established and what would the position do.  
18 Q. So you would have been involved in determining  
19 why the position was needed?  
20 A. Well, I would have been involved in that  
21 discussion, yes.  
22 Q. Would you have been involved in determining the  
23 duties and responsibilities for the position?  
24 A. I was involved with it, yes.  
25 Q. Were you involved in determining the

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803/356-1990  
800/923-8899

1 qualifications for that position?  
2 A. Yes.  
3 Q. Were you involved in determining the necessary  
4 skills and aptitude for that position?  
5 A. I was aware of it. I left that up to our  
6 personnel people.  
7 Q. What did you leave up to the personnel people?  
8 A. Well, I wanted, one of things we wanted them to  
9 do was compare like positions in other jurisdictions, see  
10 what they would do and then tell us how that would fit with  
11 the State's personnel system, how it should be designed.  
12 (Plaintiffs' Exhibit No. 41 was  
13 pre-marked for identification.)  
14 Q. Let me show you what's been marked Plaintiffs'  
15 Exhibit 41. Let me show you what's been marked Plaintiffs'  
16 41. I will represent to you that this is a memorandum  
17 letter from Henry Ervin to John Houston proposing the  
18 creation of the Departmental Assistant Personnel Manager  
19 position. It's dated June 14, 2005, and if you look on the  
20 next page, according to this, you were copied, or you would  
21 have received a copy of this. Did you receive a copy of  
22 it?  
23 A. I don't know.  
24 Q. Have you seen Plaintiffs' Exhibit 41 before?  
25 A. I don't know. I may have. I am not sure.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

134

1 Q. You cannot recall?  
2 A. No, sir.  
3 Q. I am going to give you an opportunity to read  
4 over Plaintiffs' 41. And this is my question for you when  
5 you finish reading over it: This memorandum letter gives  
6 reasons for the creation of Departmental Assistant  
7 Personnel Manager, okay, and I want you to read it for  
8 yourself and see what those reasons are. And let me know  
9 when you are done.  
10 A. (Reading document.)  
11 (Break at 1 p.m.)  
12 (Back on the record at 1:05 p.m.)  
13 BY MR. MOZINGO:  
14 Q. When we had left off, Mr. Dillihay, I had asked  
15 you if you would read Plaintiffs' 41 for me.  
16 A. Yes.  
17 Q. Have you read that exhibit?  
18 A. Yes.  
19 Q. Do you agree with me that that exhibit appears to  
20 give reasons for the creation of the position of  
21 Departmental Assistant Personnel Manager?  
22 A. Yes.  
23 Q. Do you know of any additional reasons to support  
24 the creation of that position other than those set forth in  
25 Plaintiffs' Exhibit 41?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. Yes.  
2 Q. Tell me what they are.  
3 A. There were two that were identified fairly early  
4 on. One was as we look to the makeup and organization of  
5 the Human Resources Department, that organizational  
6 structure appeared to be a little flat, and by flat I meant  
7 as far as chain of command was concerned. Having people  
8 trained and addressed in authority to take over in times of  
9 shortages or emergencies or what have you.  
10 Secondly, looking forward, I think I shared  
11 with you earlier we did an analysis of our employee base  
12 and realized that a huge percentage of the Department's  
13 employee base was retirement eligible at that particular  
14 time. I don't recall what the percentage was, but it was a  
15 large double digit number of those people who were  
16 eligible. Mr. Ervin, who was the H.R. Director, happened  
17 to be one of those people. Mr. Ervin was, in my opinion,  
18 eligible to retire, eligible to retire on age and he may  
19 have been eligible on length of service. I knew that he  
20 had some health issues, I knew that he lived in Tuscaloosa  
21 and was wanting to get closer to his new wife, and having  
22 been retirement eligible, it was, in my opinion, my  
23 responsibility to look forward in that organization to see  
24 how we would continue operations in that area should  
25 Mr. Ervin suddenly not be available to us for whatever

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

136

1 reason. And that was one of the other components that was  
2 used to determine the need to have that level of  
3 supervision developed.  
4 Q. So you wanted to lay the groundwork for  
5 Mr. Ervin's absence?  
6 A. I wanted to lay the groundwork for the efficient  
7 and continual management of personnel functions.  
8 Q. When Mr. Ervin left?  
9 A. When he left?  
10 Q. Correct.  
11 A. When he left, while he was there, or any of that,  
12 but I knew if I have got someone, the same way I plan for  
13 everything, I try to put redundancy plans in place and if  
14 for some reason he suddenly was not available to us  
15 management operations had to continue in that area.  
16 Q. So one reason for the creation of this position  
17 that you knew of back when the idea of creating it was  
18 being discussed, was that the Department, you needed  
19 preparation for the continuance of the work of the  
20 Department upon Mr. Ervin's retirement?  
21 A. No. Not upon his retirement.  
22 Q. Or Mr. Ervin not being there?  
23 A. If he is not there we have got to still operate,  
24 and I needed to have some assurances that we had an  
25 organizational structure that could provide for me those

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803/356-1990  
800/923-8899

1 assurances of continued operation.  
2 Q. In other words, somebody was needed to carry out  
3 Mr. Ervin's responsibility if he wasn't there?  
4 A. Part of them, yes.  
5 Q. Other than Mr. Ervin's potential retirement  
6 eligibility, did you have any specific concerns about him  
7 possibly not being there?  
8 A. Yes, sir. As I said, he had some health issues  
9 that he and I had discussed.  
10 Q. What were the health issues you had discussed?  
11 A. I would not disclose those, sir. That is  
12 privileged information.  
13 MR. NIX: It is.  
14 BY MR. MOZINGO:  
15 Q. Well, you are not a medical doctor, are you?  
16 A. No, sir. I am not medical doctor, but I have  
17 served as chief of several hospitals, and I am aware of  
18 what is privileged and what's not and that's privileged  
19 health information.  
20 Q. But it was your understanding that Mr. Ervin had  
21 health issues?  
22 A. Yes.  
23 Q. Mr. Ervin lived in Tuscaloosa?  
24 A. As far as I knew, yes.  
25 Q. So it sounds like you were concerned that if

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803/356-1990  
800/923-8899

138

1 something happened to Mr. Ervin, whether it be health or  
2 whatever, you were concerned that that department be  
3 structured where someone could immediately take over in his  
4 absence?  
5 A. That was part of it. The other part of it was  
6 looking at the organizational structure generally and  
7 making sure that we had a chain of command that would  
8 filter and provide quality advice as it related to  
9 personnel matters, and I think the other component of it  
10 was internal to that organization so that we could develop  
11 a step of career development processes where someone might  
12 be able to come in at the lowest parts of the organization  
13 and be promoted up ultimately to the Chief's job.  
14 Q. At that time, back in 2005, were you concerned  
15 that Mr. Ervin's departure might be imminent or in the near  
16 future?  
17 A. No. I wasn't, I wouldn't say it was imminent  
18 like he was going to leave today. I'm saying that one of  
19 the things that we did was take a look at the Department  
20 and its employee base, because we knew that the baby  
21 boomers were aging out of our system, so I wanted to know  
22 what that meant for the Department, not just in H.R., but  
23 the entire Department, so that we could begin to plan and  
24 organize around meeting those deficits and loss of  
25 institutional knowledge as it exited out of the

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 organization.  
2 Q. At that time did you have any concern that  
3 Mr. Ervin's departure could be in the near future?  
4 A. Define near future.  
5 Q. Well, I'm asking the question. If you felt that  
6 way, let me know. I don't know how to define your future  
7 for you, but my question is at that time did you have any  
8 concerns that his departure would be in the near future?  
9 A. I don't know what you are referring to as near.  
10 I don't know if you are saying a week, a year, or two  
11 years. What I am saying is that my review of Mr. Ervin and  
12 his particular personal situation led me to believe that  
13 perhaps he might not be there through the end of my planned  
14 tenure of being there, which would have been from the time  
15 I arrived in 2004 until the time I left in 2007.  
16 Q. Let me go through and make sure I'm clear on the  
17 reasons for the creation of this position. I asked you  
18 that, in addition to the reasons given in Plaintiffs'  
19 Exhibit 41, were there any other reasons to create that  
20 position, and you told me your concern was that the  
21 organizational structure was flat, that you had conducted  
22 an analysis of employee base---  
23 A. I didn't conduct it.  
24 Q. That an analysis had been conducted of the  
25 employee base and there was a large percentage retirement

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803/356-1990  
800/923-8899

140

1 eligible. In addition, that Mr. Erwin was retirement  
2 eligible.  
3 A. That's correct.  
4 Q. He lived out of town, he had health issues, and  
5 you wanted some built-in redundancy.  
6 A. Yes.  
7 Q. Other than those reasons and the reasons set  
8 forth in Plaintiffs' Exhibit 41, were there any other  
9 reasons for the creation of this position?  
10 A. Yes. I think, again, overall efficiency of the  
11 Department. One of the things that we were responsible for  
12 doing was providing a process for, for hiring, processing  
13 and separating people from deployment at the Department of  
14 Mental Health, so continuous improvement in those areas was  
15 one thing that I wanted to see achieved.  
16 Q. Any other reasons?  
17 A. None that I can think of offhand, but there are  
18 some others.  
19 Q. If you think of any during the deposition before  
20 we finish today, would you please let me know if there are  
21 any additional reasons?  
22 A. Yes.  
23 Q. What I have as the reasons set forth in  
24 Plaintiffs' 41 is organizational structure was flat, a  
25 large percentage of employees were retirement eligible,

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803/356-1990  
800/923-8899



1 Mr. Ervin was retirement eligible, had health issues, lived  
2 out of town, a need for some built-in redundancy and  
3 overall efficiency of the Department. That is what---  
4 A. And a need to create a career development path  
5 within the H.R. Department.  
6 Q. A need to create a career development path?  
7 A. Maybe that's not -- maybe a more well defined  
8 career development path. I don't know what all the  
9 positions were, but you could start out, say, at a clerk's  
10 level and from the clerk you had the head of H.R. In  
11 between were several other positions. Those positions  
12 weren't necessarily lined out and graded in a promotion and  
13 classification process that said you could start at step  
14 one and end at step five, and you could come in  
15 legitimately if you met all the qualifications and you were  
16 successful in being the hired candidate for that, that it  
17 would be possible for someone to come to the organization,  
18 start at the lower ranks and end up at the higher ranks the  
19 same way at the Department our last two Commissioners have  
20 done that. They have started out at very low ranks and  
21 educated themselves and promoted themselves through the  
22 process to Commissioner.  
23 Q. And I wrote that down. Need to create a career  
24 or more well-defined career path. Any other reason?  
25 A. If it comes to me, I'll certainly---

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803/356-1990  
800/923-8899

142

1 Q. You'll let me know, right?  
2 A. Yes.  
3 Q. Did you have any discussions with Mr. Ervin about  
4 the preparation of Plaintiffs' Exhibit 41?  
5 A. I don't recall having any. I had general  
6 discussions as you see in the memo about the various  
7 elements within that, but I don't recall one that was  
8 specifically related to the development of this document.  
9 Q. The reasons that you have just given me---  
10 A. Yes.  
11 Q. ---that I have written down here, go over them  
12 again any time you want, the reasons that I have written  
13 down, did you ever share those reasons with Mr. Ervin prior  
14 to the creation of Plaintiffs' Exhibit 41?  
15 A. I don't recall. I certainly would have shared  
16 some of those. I am not certain that I would have shared  
17 all of them. I am particularly clear on the fact that I  
18 did not discuss with him his health issues personally,  
19 although I was aware of them. But I did not want him to  
20 feel that in any way we were moving to get him out of the  
21 organization or wanted him to feel uncomfortable in any  
22 way. So we had generally broad discussions about the  
23 creation of this position, some of my reasoning, some of  
24 the Commissioner's reasoning in wanting to establish this  
25 position and some of the benefits that would be derived as

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803/356-1990  
800/923-8899

1 a result of having that position.  
2 Q. Do you recall any specific discussions with  
3 Mr. Ervin about the creation of that position---  
4 A. I don't recall any specific discussions.  
5 Q. Let me finish my question. Do you recall any  
6 specific discussions with Mr. Ervin about the creation of  
7 that position prior to his preparing Plaintiffs' Exhibit  
8 41?  
9 A. I don't recall any specific discussions that I  
10 had with him.  
11 Q. Do you recall any specific discussions with  
12 Mr. Ervin about the creation of that position after his  
13 preparing Plaintiffs' Exhibit 41?  
14 A. I don't recall any specific discussion, no, sir.  
15 Q. So as we sit here today, you, Otha Dillihay,  
16 cannot recall any specific discussions with Henry Ervin  
17 about the creation of the Assistant Personnel Department  
18 Manager?  
19 A. Not specifically, no, sir.  
20 Q. Any recollection that you have of discussions  
21 with Mr. Ervin about the creation of that position would be  
22 recollections in general?  
23 A. Yes.  
24 Q. Is that correct?  
25 A. Yes, sir.

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803/356-1990  
800/923-8899

144

1 Q. But you cannot recall when those discussions  
2 would have occurred?  
3 A. I not only cannot recall when, I can't recall the  
4 specific content of the discussions themselves.  
5 Q. Mr. Dillihay, help me out if you will about in  
6 walking me through the process of the creation of a new  
7 position with Mental Health. I want to make sure I  
8 understand this process and make sure I'm clear on it. The  
9 creation of this new job of Departmental Assistant  
10 Personnel Manager, was it proposed by you or Mr. Ervin or  
11 by someone else?  
12 A. I don't recall.  
13 Q. When a new job is proposed, is it generally  
14 proposed from within the Department where the job may be  
15 desired or is it generally proposed somewhere else in the  
16 management pyramid we've discussed?  
17 A. I really don't recall how we did it in Alabama  
18 specifically, but I am sure that new job requests came up  
19 both internally, they also came up as a matter of course of  
20 the political process between the Mental Health authorities  
21 in the community and the Department. They may see a need  
22 for a specific type of position. They also were created by  
23 the affirmation and awarding of various grants that the  
24 Department received. We could write a grant for a  
25 particular endeavor and a result of that grant funding

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803/356-1990  
800/923-8899

1 would result in the creation of a new position, so there is  
2 a number of different ways that the idea and the initiation  
3 for a new position would have been created at that  
4 Department.

5 Q. During your employment with Mental Health, did  
6 the position of Departmental Assistant Personnel Manager  
7 ever receive any grant funding -- let me ask it a better  
8 way.

9 Did the Department ever receive any grant  
10 funding that necessitated or required the creation of that  
11 position?

12 A. I don't recall any.

13 Q. And you do not know who proposed the creation of  
14 this job, that being the Departmental Assistant Personnel  
15 Manager.

16 A. No, sir. Not specifically.

17 Q. Could it have been you?

18 A. I don't recall. As I said, I don't recall who  
19 did it. We had a lot of discussion about the Department,  
20 how it was set up. When that decision was made and who  
21 actually said I think we ought to create this position, I  
22 don't recall who did it. And keep in mind these were  
23 conversations that have been going on through the course of  
24 my employment.

25 Q. But, for the record, you do not recall if you

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803/356-1990  
800/923-8899

146

1 could have been the person who proposed the creation of  
2 this position?

3 A. I don't recall specifically, no, sir.

4 Q. Who do you believe proposed it?

5 A. I don't recall. I don't know. It could have  
6 been John, Henry, me, June. I don't know.

7 Q. But for this position to be created at some point  
8 in that process, it's my understanding that you as  
9 Assistant Commissioner of the Administrative Division had  
10 to approve that creation.

11 A. Well, I don't think I approved the creation.  
12 What I did was make recommendations to the Commissioner for  
13 the creation of that position. The Commissioner had the  
14 appointing authority for Central Office, not the Associate  
15 for Admin.

16 Q. Since you can't recall, maybe let's work around  
17 some assumptions and see if this helps any. Let's assume  
18 Henry Ervin had the idea for the position. Okay? Assuming  
19 Henry Ervin had the idea, would he approach you first about  
20 his idea and get your approval or would he approach someone  
21 else?

22 A. I don't know. I have no idea.

23 Q. Do you know if he approached you first?

24 A. No. I don't know.

25 Q. When you were working for the Department of

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803/356-1990  
800/923-8899

1 Mental Health did Henry Ervin ever propose the creation of  
2 a new position?

3 A. A new position?

4 Q. Correct.

5 A. When you say propose?

6 Q. Correct.

7 A. Did he get -- I don't know. I don't know. I  
8 mean there are thousands of personnel actions that went  
9 across my desk over the course of that time, so I don't  
10 recall specifically which ones he would have been directly  
11 involved in. Again, if it were something that was created  
12 as a result of something external to the organization like  
13 a grant award, it might look like Henry proposed it, but it  
14 was a part of a process.

15 Q. But when I say proposed the creation of a new  
16 position, am I being ambiguous there, does that have more  
17 than one meaning to you?

18 A. Creation of a new position?

19 Q. Of a new position.

20 A. Yes. It is an ambiguous term. You could be  
21 promoted from one position to another doing similar work,  
22 but because of the additional duties we may have to create  
23 a new position for you to assume a salary and grade that  
24 would be commensurate with your new duties. That would be  
25 the creation of a new job. We would have to get a position

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

148

1 number, we would have to go through the process of doing  
2 it. So as I said, many, many positions were created in  
3 that Department and dissolved within that Department given  
4 the ongoing cost and review of what was needed to make the  
5 Department function.

6 Q. But you did testify that during your tenure with  
7 the Department that many positions were created?

8 A. I would imagine that they were.

9 Q. Well, that's what you just said.

10 A. Well, we had like, I think, about six thousand  
11 employees. I don't recall how many, but I would imagine  
12 there were are a lot of positions that were created  
13 throughout that Department.

14 Q. During your tenure with the Department, did Henry  
15 Ervin ever propose the creation of a new position?

16 A. I thought I just answered that.

17 Q. You didn't.

18 A. I didn't?

19 Q. No.

20 A. Let me answer it again. As a part of the  
21 process, and Henry Ervin being the Director of Human  
22 Resources, those processes would bubble up and emanate  
23 through his position. On paper, if you look, it will look  
24 as if Henry Ervin is recommending for approval to the  
25 Commissioner that this new position be created. I don't

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803/356-1990  
800/923-8899

1 know. It could have been something in the hospital, it  
2 could have been something in Central Office, but  
3 specifically that this or any other job emanate out of his  
4 conscience to come forward and it was solely Henry's idea,  
5 I don't know that.

6 Q. Well, we do have Plaintiffs' Exhibit 41, correct?

7 A. Uh-huh.

8 Q. Would you agree that according to Plaintiffs'  
9 Exhibit 41 Henry Ervin is proposing the creation of  
10 Departmental Assistant Personnel Manager?

11 A. Yes.

12 Q. Would you agree with that?

13 A. Yes, sir.

14 Q. My question to you is during your tenure, Mr.  
15 Dillihay, can you recall Henry Ervin ever proposing the  
16 creation of any other job?

17 A. As I said, I don't recall specifically, but I  
18 imagine that there would have been.

19 Q. Since we have Plaintiffs' Exhibit 41 would you  
20 assume that Henry Ervin proposed the creation of  
21 Departmental Assistant Personnel Manager?

22 A. No, sir. I won't assume that at all.

23 Q. Again it's your testimony that you don't know who  
24 proposed the creation?

25 A. I don't, and keep in mind this was a period of

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

150

1 transition for me. Although the notice of official  
2 transfer didn't come out until sometime later, I was  
3 already working on M.I. issues. I just hadn't moved my  
4 office yet.

5 Q. Mr. Dillihay, I am only asking what you know and  
6 what you recall.

7 A. I'm trying.

8 Q. I understand you may not know things and I  
9 understand and I appreciate that. Again, I am just asking  
10 what you know. That is what my question is directed at,  
11 what you know. Does the Commissioner ultimately approve  
12 the creation of a new job?

13 A. Yes. That is my recollection.

14 Q. Before the Commissioner approves the creation of  
15 a new job, does the creation have to be reviewed and  
16 considered by the Job Evaluation Committee?

17 A. I don't believe at that time it was a requirement  
18 in policy. I know that the Job Evaluation Committee had  
19 been commissioned and that they did review new position  
20 requests, but I am fairly certain that as a matter of  
21 policy that that was not a requirement.

22 Q. But you do remember the Job Evaluation Committee  
23 considering the creation of new jobs?

24 A. Yes.

25 Q. Do you know of any job that was created without

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 being considered by the Job Evaluation Committee?

2 A. There were some. I don't recall them

3 specifically. But yes, there were some.

4 Q. How many?

5 A. I don't know.

6 Q. But you specifically recall some being created?

7 A. I know there were some positions that were  
8 created that may not have gone through the Job Evaluation  
9 Committee, particularly those that may have occurred in our  
10 facilities.

11 Q. My question is not whether some may not have. My  
12 question is do you know of any that were created that did  
13 not go through the Job Evaluation Committee?

14 A. I believe that there were some. I don't recall  
15 specifically as to name and place or time.

16 Q. Do you know how many there were?

17 A. No, sir.

18 Q. Prior to the Commissioner approving the creation  
19 of a job, must the job itself, and when I say the job  
20 itself, I mean where the job is located, its duties, its  
21 responsibilities, its wage classification, must that  
22 already be known before the Commissioner can approve it?

23 A. Before it's approved as---

24 Q. Before it's approved?

25 A. I believe that is correct.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

152

1 Q. It seems to be common sense to me if you are  
2 going to approve a job you have to know where the job will  
3 be, correct?

4 A. Yes.

5 Q. You have to know what the job is going to be  
6 doing?

7 A. Yes.

8 Q. And you have to know what the job will be paid?

9 A. Yes.

10 Q. Was there any policy or procedure or rule of  
11 thumb as to when jobs were not reviewed by the Job  
12 Evaluation Committee?

13 A. I don't recall. I imagine we had policies and  
14 regulations to address those issues.

15 Q. From what I understand of your testimony is that  
16 some jobs were reviewed by the Job Evaluation Committee  
17 while others were not?

18 A. May not have been, yes, sir.

19 Q. And so I am trying to find out if you know if  
20 there would be any guidelines as to when jobs were reviewed  
21 by the Job Evaluation Committee and when they are not?

22 A. I don't recall the guidelines of that or the  
23 mission of that.

24 Q. So you can't give me any as we sit here today?

25 A. No, sir.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 (Plaintiffs' Exhibit No. 19 was  
2 pre-marked for identification.)  
3 Q. Let me show you what's been marked as Plaintiffs'  
4 Exhibit No. 19. Mr. Dillihay, prior to the creation of  
5 Plaintiffs' Exhibit 41, do you know if the duties,  
6 responsibilities, qualifications, knowledge, skills and  
7 abilities for the position of Departmental Assistant  
8 Personnel Manager had been defined?  
9 A. Prior to this (referring to exhibit)?  
10 Q. Prior to that.  
11 A. I don't recall. I don't know.  
12 Q. Do you know what involvement, if any, the State  
13 Personnel Department would have in the creation of an  
14 exempt position such as Departmental Assistant Personnel  
15 Manager?  
16 A. I don't recall what their involvement would be.  
17 Q. Do you even know if they would have any  
18 involvement?  
19 A. I am certain that I would have asked the question  
20 what did State Personnel have to say about it. So if  
21 nothing else, we would have called and asked for their  
22 counsel and advice on the creation of those job specs.  
23 Q. Do you know for a fact that anyone called the  
24 Department of Personnel and asked for their advice and  
25 counsel?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

154

1 A. I don't recall any specifics, but I do recall  
2 that there was conversations with State Personnel about  
3 this position.  
4 Q. Were you a part of any of those conversations?  
5 A. No, sir.  
6 Q. Do you know who was?  
7 A. I imagine Henry would have been one of the  
8 persons who was involved with it and whoever was the head  
9 of State Personnel, I believe her name was Jackie  
10 something. At least those two people.  
11 Q. Other than giving advice or consultation, did you  
12 play any other role in the creation of a new position with  
13 the State Department of Mental Health?  
14 A. A new position?  
15 Q. A new position.  
16 A. As I said, that was part of the processing that  
17 went on at the Department, so as things went from one part  
18 of the Department through Personnel to the Commissioner, I  
19 am certain that I was involved in that.  
20 Q. But would your involvement have been of an  
21 advisory nature or did you have any final say or authority?  
22 A. Final say and authority rests with the  
23 Commissioner.  
24 Q. Did you have any final say or authority  
25 concerning anything that happened in the Human Resource

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803/356-1990  
800/923-8899

1 Department at Mental Health?  
2 A. Any final say in what happened in anything?  
3 Q. Correct. In any decisions that were made did you  
4 have final say or authority?  
5 A. I am certain I had some final say in something.  
6 I supervised the Department. One of the things that I had  
7 final say and authority over is when people would be  
8 allowed to take leave, things of that nature, so yes, I had  
9 final say and authority in what went on within that  
10 Department.  
11 Q. Other than when people would be allowed to take  
12 leave, what other final say and authority did you have?  
13 A. The evaluation of personnel. I signed off as the  
14 reviewer for personnel that reported to Mr. Ervin.  
15 Q. Mr. Ervin would prepare the evaluation of those  
16 people who reported to him?  
17 A. Yes.  
18 Q. And then you would review them and sign off?  
19 A. No, sir. He would prepare it, evaluate the  
20 people, he would hold those evaluation conferences in  
21 accordance with policy and I would review his evaluation.  
22 Q. Other than those two items, personal leave and  
23 evaluations, anything else that you had final say and  
24 authority over?  
25 A. Yes. I imagine I would have final say and

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803/356-1990  
800/923-8899

156

1 authority over certain memoranda or correspondence that  
2 might go between our agency and State Personnel in a  
3 certain sense depending on what it was responding to. As I  
4 told you, we had complex matters that we dealt with related  
5 to the calculation of pay for employees, so I would have  
6 some final say into how those things were arrived at. Just  
7 depended on what the specifics would have been.  
8 Q. Did you have final say in any part of the process  
9 in the creation of the Departmental Assistant Personnel  
10 Manager?  
11 A. Final say and authority?  
12 Q. Yes, sir.  
13 A. No, sir.  
14 Q. I think your attorney may have that Exhibit  
15 number right there that I handed you. What number are we  
16 on?  
17 A. Nineteen.  
18 Q. Exhibit Number 19. Do you see that Exhibit  
19 Number 19, there is a section under "Definition?"  
20 A. Yes, sir.  
21 Q. There is a paragraph---  
22 A. Yes.  
23 Q. ---that defines the job, is that correct?  
24 A. That's what it appears to be, sir.  
25 Q. Did you approve any language contained in that

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 paragraph?  
2 A. I don't recall approving, no, sir.  
3 Q. Did you give any advice or offer any consultation  
4 to anyone on the language contained in the definition  
5 paragraph?  
6 A. None that I recall specifically. No, sir.  
7 Q. Do you see where it says: "Examples of Work  
8 Performed?"  
9 A. Yes, sir.  
10 Q. It starts on page one and continues to the top of  
11 page two?  
12 A. Yes, sir.  
13 Q. Did you have final say and authority over any  
14 bullet points listed under the "Examples of Work  
15 Performed?"  
16 A. I would say, again, this would have been  
17 something that would have gone up through the  
18 Commissioner's Office, it would have gone through me to the  
19 Commissioner, so I probably, if I had seen this, would have  
20 been part of a processing issue.  
21 Q. Listen to my question. I understand the process  
22 you're telling me about, but that is not my question. My  
23 question is did you have final say and authority on any of  
24 the bullet points that are listed under the "Examples of  
25 Work to be Performed?"

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

158

1 A. Before the job description was approved? As I  
2 said, the Commissioner, that this thing would have come up  
3 through a process. I am not certain where the final say of  
4 authority would have come from, because I don't recall what  
5 our processes were at that time. I certainly would have  
6 given input into it. If there was something that was not  
7 appropriate about it, if I reviewed it, then I would have a  
8 statement to say about it. But the final say and authority  
9 ultimately I think rests with the process that's in place  
10 at the Department.  
11 Q. Do you specifically recall giving anyone any  
12 advice or consultation on the bullet points that are listed  
13 as "Examples of Work to be Performed?"  
14 A. No, sir. I don't specifically recall that.  
15 Q. Look onto the next page where it says  
16 "Knowledge, Skills and Abilities."  
17 A. Yes.  
18 Q. Did you have final say and authority on any of  
19 the bullet points that are listed under "Knowledge, Skills  
20 and Abilities?"  
21 A. I think I have answered that.  
22 Q. No, no, no, sir. You answered it as to--  
23 A. The job description.  
24 Q. --"Examples of Work Performed."  
25 A. Well, my statement would, again, this is part of

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803/356-1990  
800/923-8899

1 a process. Wherever that final say and authority was, I am  
2 certain that this would have come through me. I don't  
3 recall having any specific knowledge about this document.  
4 Q. So is it your testimony then that you have no  
5 specific knowledge regarding Plaintiffs' Exhibit 19?  
6 A. Specific knowledge, no, sir.  
7 Q. It is 19, right? Did I say that correctly?  
8 A. Yes.  
9 Q. Do you recall ever seeing Plaintiffs' Exhibit 19  
10 before today?  
11 A. I -- well, I don't know. I don't know if it were  
12 in papers that we have been exchanging with counsel. I  
13 just -- I don't know. I have seen so many papers related  
14 to this I couldn't possibly tell you I recall seeing this  
15 before today.  
16 Q. So the record is clear, as we sit here today in  
17 your deposition, you have no specific recollection of  
18 seeing what's been marked Plaintiffs' Exhibit 19?  
19 A. Yes, sir. That's correct.  
20 (Plaintiffs' Exhibit No. 20 was  
21 pre-marked for identification.)  
22 Q. Let me show you what's been marked Plaintiffs'  
23 Exhibit 20. Do you have any specific recollection of  
24 seeing Plaintiffs' Exhibit 20 before today?  
25 A. No, sir.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

160

1 Q. Do you know if you have ever seen that document  
2 before?  
3 A. I am not certain if I have seen it before, sir.  
4 (Plaintiffs' Exhibit No. 42 was  
5 pre-marked for identification.)  
6 Q. Let me show you what's been marked is Plaintiffs'  
7 Exhibit 42 and let me say for the record, Mr. Dillihay, to  
8 explain this to you, I thought I did a much better job of  
9 pre-marking some of these documents so they would flow for  
10 you in your deposition, and obviously I didn't do quite the  
11 job I thought I did. Let me show you what's been marked  
12 Plaintiffs' Exhibit 42. Do you have any specific knowledge  
13 of ever seeing Plaintiffs' Exhibit 42 prior to today?  
14 A. No, sir.  
15 Q. So you don't know if you have ever seen  
16 Plaintiffs' Exhibit 42?  
17 A. No, sir. As I said, during the course of my  
18 career I have seen tons of -- I don't recall the specifics.  
19 In fact, they look identical. They are identical. I don't  
20 know. It could be the same document.  
21 Q. Mr. Dillihay, do you have any specific knowledge  
22 or recollection of the policies of the Alabama Department  
23 of Mental Health--  
24 A. Specific knowledge?  
25 Q. Give me a chance to finish. Concerning equal

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899



1 employment opportunities?  
2 A. Specific knowledge?  
3 Q. Yes, sir.  
4 A. Related to equal -- meaning? Can I quote chapter  
5 and verse of the code?  
6 Q. No, sir. Meaning can you tell me what the  
7 department policy is on equal employment opportunities?  
8 A. I don't recall specifically, no, sir.  
9 (Plaintiffs' Exhibit No. 15 was  
10 pre-marked for identification.)  
11 Q. Let me show you what's been marked Plaintiffs'  
12 Exhibit 15. And I will just read for the record the first  
13 sentence under Policy: "The Alabama Department of Mental  
14 Health/Mental Retardation will recruit, employ, promote,  
15 remunerate and conduct all personnel administrative  
16 practices without regard to race, religion, national  
17 origin, color, age, gender or disability, except where sex  
18 or physical ability constitute a bona fide occupational  
19 qualification." Did I read that correct?  
20 A. It appears you did, sir.  
21 Q. Would you agree with me that it is the policy of  
22 the Alabama Department of Mental Health to conduct  
23 recruitment, employment, promotion, remuneration, and to  
24 conduct all administrative personnel practices irregardless  
25 of a person's race?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

162

1 A. I will say that that was the policy as of  
2 1/19/07. I am not certain what the Department's policy is  
3 at this point.  
4 Q. Do you believe that the Department had a  
5 different policy prior to 1/19/07?  
6 A. It appears that they did. It says that the  
7 policy was effective 4/4/88. And I don't know what that  
8 policy spoke to. It was again reviewed 8/7/2002. I have  
9 no knowledge of what that policy included, and it was  
10 changed on 1/19/07, so I'm not certain what the policy was  
11 prior to that.  
12 Q. In your tenure with the Alabama Department of  
13 Mental Health system prior to January 19, 2007, did the  
14 Department promote, recruit, employ, remunerate and conduct  
15 personnel administrative practices on the basis of race?  
16 A. Say that again.  
17 Q. Prior to January 19, 2007, during your tenure  
18 with the Alabama Department of Mental Health, did the  
19 Department recruit, employ, promote, remunerate or conduct  
20 personnel administrative practices on the basis of race?  
21 A. No, sir. I believe we conducted administrative  
22 practices without regard to race.  
23 Q. So then you would think that the policy of the  
24 Department has not changed?  
25 A. I don't know what the Department policy is right

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803/356-1990  
800/923-8899

1 now. I can't speak to that.  
2 Q. Well, it has not changed really from January 19,  
3 2007.  
4 A. If you say so, I will take you on your words.  
5 Q. Let me put it this way. The policy then  
6 reflected on Plaintiffs' Exhibit 15, would have been the  
7 same policy followed prior to January 19, 2007, is that  
8 correct?  
9 A. No, sir. The policy reflected would have been  
10 the policy in place as of January 19, 2007. Prior to that  
11 would have been the policy that would have been in place  
12 from effective date of 8/7/2002, and prior to that 4/4/88,  
13 and I don't know what those policies speak to, sir.  
14 Q. Did the Department have a similar policy as  
15 reflected in Plaintiffs' Exhibit 15 prior to January 19,  
16 2007?  
17 A. I have no knowledge of that.  
18 Q. Do you see where its says Standards?  
19 A. Yes, sir.  
20 Q. Below, it says "the Department will maintain and  
21 implement an internal Affirmative Action Plan?"  
22 A. Yes.  
23 Q. Did the Department have an Internal Affirmative  
24 Action Plan prior to January 19, 2007?  
25 A. As far as I know there was one in place, yes.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

164

1 Q. What was that plan?  
2 A. I have no idea.  
3 (Plaintiffs' Exhibit No. 16 was  
4 pre-marked for identification.)  
5 Q. Let me show what you what's been marked  
6 Plaintiffs' Exhibit 16. It says "Employees of the  
7 Department of Mental Health and Mental Retardation will not  
8 be subjected to any form of discrimination or favoritism,"  
9 is that correct?  
10 A. That is what the policy says.  
11 Q. Was that the policy of the Department during your  
12 employment there?  
13 A. This was the policy as of 8/31/06. I don't have  
14 any knowledge of whether or not it's been amended since  
15 that time.  
16 Q. Was that the policy of the Department at all  
17 times you were employed there?  
18 A. I am not certain. From '06 to current, I don't  
19 know if it were. This would have been the policy effective  
20 during a period of time that I was in the Department, but I  
21 don't know if it were changed. I don't recall it being  
22 changed.  
23 Q. Prior to August 31, 2006, did the Alabama  
24 Department of Mental Health and Mental Retardation, to your  
25 knowledge, carry out employment actions on the basis of

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803/356-1990  
800/923-8899

1 either discrimination or favoritism?  
2 A. Repeat please.  
3 Q. Let me remain more faithful to the words of this  
4 policy here. That's all I am trying to do.  
5 A. Okay.  
6 Q. Prior to August 31, 2006, in your experience did  
7 the Alabama Department of Mental Health subject employees  
8 to discrimination or favoritism?  
9 A. Subject them to it?  
10 Q. Correct.  
11 A. I don't know. You would probably have to ask our  
12 legal counsel as to whether or not we subjected to it. You  
13 are talking about a policy on nepotism prior to 8/31/06  
14 compared to the other policy which is equal employment  
15 opportunity, which was changed on 1/19/07. They speak to  
16 two different standards.  
17 Q. Well, they both prohibit discrimination, don't  
18 they?  
19 A. Yes. Well, it says will not be subjected, which  
20 is not a word that I am aware of. Will not be subjected to  
21 any form of discrimination or favoritism. Now that is a  
22 statement that says the Department will not be subjected to  
23 it. I don't think that that is a prohibitive or  
24 prophylactic measure that says that the Department will not  
25 be exposed to or have that experience in its operations.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

166

1 Q. Well, in your experience as Associate  
2 Commissioner with the Alabama Department of Mental Health,  
3 did the Department engage in discrimination during your  
4 tenure?  
5 A. No, sir. Not that I'm aware of.  
6 Q. Did the Department have a different policy  
7 regarding discrimination prior to what is reflected in  
8 Plaintiffs' Exhibit 16?  
9 A. I don't know. I have no recollection of that.  
10 (Plaintiffs' Exhibit No. 17 was  
11 pre-marked for identification.)  
12 Q. Let me show you what's been marked Plaintiffs'  
13 Exhibit 17. Have you ever seen that policy before?  
14 A. I don't recall.  
15 Q. At any time that you served as Associate  
16 Commissioner of Mental Health did you review the Policy  
17 Manual of the Department?  
18 A. Yes.  
19 Q. But you can't recall whether you have seen that  
20 policy before?  
21 A. No, sir.  
22 Q. Can you recall seeing any of those other policies  
23 we have gone over before?  
24 A. Not specifically, no, sir, but I am sure I have  
25 seen them in my review of the manuals.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 (Plaintiffs' Exhibit No. 18 was  
2 pre-marked for identification.)  
3 Q. Let me show you what's been marked Plaintiffs'  
4 Exhibit 18. There is a Request to Fill Exempt Position on  
5 Staffing Plan, correct?  
6 A. Yes.  
7 Q. Is your signature anywhere on that document?  
8 A. Yes. It is.  
9 Q. Is that your signature above the line that  
10 says---  
11 A. Yes, sir.  
12 Q. ---Associate Commissioner Otha R. Dillihay?  
13 A. That's correct.  
14 Q. Did you sign this document June 12, 2005?  
15 A. It appears that I did.  
16 Q. Do you have any contrary knowledge that you  
17 signed it at a different time?  
18 A. I have no specific recollection.  
19 Q. Do you believe then that you would have signed it  
20 on June 12, 2005?  
21 A. Yes, sir.  
22 Q. Why did you sign this document?  
23 A. Because at that particular time I was the person  
24 vested with the signatory authority for this position  
25 moving forward. I had not made my transition to the other

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803/356-1990  
800/923-8899

168

1 area officially. And there were matters of signatory  
2 authority that had to be respected. Even though I may have  
3 been working in an area, I may have signed off as the  
4 Associate Commissioner.  
5 Q. Can you please explain what is signatory  
6 authority?  
7 A. Signatory authority is the authority that is  
8 vested, or delegated, rather, by the Commissioner and/or  
9 Statute of Regulations that divest into any particular  
10 position the authority to sign certain documents.  
11 Q. Does the authority to sign certain documents mean  
12 you consent to certain actions?  
13 A. Means you consent to certain actions?  
14 Q. Correct.  
15 A. No, sir. I signed documents that I actually  
16 didn't consent to in the Department.  
17 Q. Did you consent to the creation of Departmental  
18 Assistant Personnel Manager?  
19 A. Yes.  
20 Q. You did consent?  
21 A. Yes.  
22 Q. At the time that you consented to the creation of  
23 that position, were you aware of the definition of that  
24 position as reflected in Plaintiffs' Exhibit 19?  
25 A. No, sir. I don't recall if I was or wasn't.

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803/356-1990  
800/923-8899

1 Q. Were you aware of the examples of work performed  
2 for that position as reflected in Plaintiffs' Exhibit 19?  
3 A. Not specifically I don't recall.  
4 Q. Were you reflected of the knowledge, skills and  
5 abilities for that position as reflected in Exhibit 19?  
6 A. I don't recall specifically.  
7 Q. Were you aware of the qualifications of that  
8 position as reflected in Plaintiffs' Exhibit 19?  
9 A. I do not recall specifically.  
10 Q. Were you aware of the qualifications for that  
11 position as reflected in Plaintiffs' Exhibit 20?  
12 A. When?  
13 Q. At the time you signed this document.  
14 A. I don't recall specifically, no.  
15 Q. Were you aware of the kind of work the position  
16 would be performing as reflected in Plaintiffs' Exhibit 20?  
17 A. Not specifically.  
18 Q. Again, at the time that you signed?  
19 A. Not specifically. I don't recall the specifics  
20 of it.  
21 Q. At the time you signed Plaintiffs' Exhibit 18,  
22 were you aware of the required knowledge, skills and  
23 abilities of that position as reflected in Plaintiffs'  
24 Exhibit 20?  
25 A. I don't recall specifically.

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803/356-1990  
800/923-8899

170

1 Q. When you signed Plaintiffs' Exhibit 18, your  
2 signature reflected consent to the creation of that  
3 position, correct?  
4 A. I am not certain what this was, but I imagine  
5 that was part of the process, sir.  
6 Q. What did you understand that position to be at  
7 the time you signed Plaintiffs' Exhibit 18?  
8 A. Looks like Departmental Assistant Personnel  
9 Manager.  
10 Q. What did you understand the definition of that  
11 position to be at the time you signed Plaintiffs' Exhibit  
12 18?  
13 A. The definition specifically, I don't know. That  
14 it was going to be an Assistant Personnel Manager.  
15 Q. What did you understand the required knowledge,  
16 skills and abilities for that position to be at the time  
17 you signed Plaintiffs' Exhibit 18?  
18 A. I don't recall specifically.  
19 Q. What did you understand the qualifications for  
20 that position to be at the time you signed Plaintiffs'  
21 Exhibit 18?  
22 A. I don't recall the specific qualifications.  
23 Q. If you were consenting to the creation of that  
24 position when you signed Plaintiffs' Exhibit 18, wouldn't  
25 you have known the definition of that position?

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803/356-1990  
800/923-8899

1 A. At the time, sir, I probably would have reviewed  
2 it, absolutely. And again, I do not use the word consent.  
3 I approved this to go forward to the Commissioner for his  
4 review and approval, and as I have said, I have had to  
5 approve other documents that I didn't necessarily consent  
6 to.  
7 Q. At the time you approved the creation of that  
8 position that is reflected in Plaintiffs' 18, you knew the  
9 definition of that job?  
10 A. Did I know the definition of the job?  
11 Q. Correct.  
12 A. I suppose I could read it. I don't want to say I  
13 had it committed to memory, no, but if there was support  
14 documentation that was attached to this, as I said, among  
15 the many documents that I was required to sign on a regular  
16 basis, I am certain that I reviewed those support  
17 documentations, and I don't know what came along with this  
18 in the form of support documentation. I can assure you  
19 this: I don't think I would have signed this piece of  
20 paper (indicating) without at least knowing what I was  
21 signing, so I certainly asked some questions about it but I  
22 don't recall what they were specifically.  
23 Q. But you testified earlier that you don't recall  
24 seeing Plaintiffs' Exhibit 19.  
25 A. Not specifically, no, sir.

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803/356-1990  
800/923-8899

172

1 Q. So you don't know if Plaintiffs' Exhibit 19 came  
2 along with it?  
3 A. I don't know what came along with that (referring  
4 to Exhibit 18).  
5 Q. You testified earlier you don't recall seeing  
6 Plaintiffs' Exhibit 20 or Plaintiffs' Exhibit 42, correct?  
7 A. No, sir. Not specifically.  
8 Q. So you don't recall whether Plaintiffs' Exhibit  
9 20 or 42 came along with what's been marked Plaintiffs'  
10 Exhibit 18?  
11 A. I don't recall what came along with that exhibit.  
12 Q. That exhibit being?  
13 A. Eighteen (18).  
14 Q. I will represent to you, Mr. Dillihay, the only  
15 thing I have ever seen for this position is Plaintiffs'  
16 Exhibit 20, Plaintiffs' Exhibit 42, and Plaintiffs' Exhibit  
17 19. That is all I have ever seen. Have you seen anything  
18 else written describing this position?  
19 A. Nothing specifically that I recall.  
20 Q. So if there is something else describing it out  
21 there, you can't testify that you recall seeing it?  
22 A. Not specifically. I know there were other things  
23 that was discussed in Job Evaluation Committee prior to its  
24 approval. There were packages prepared for that. I just  
25 don't have the specific recollection of all the

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803/356-1990  
800/923-8899

1 documentation.  
2 Q. When you were associated with the Department of  
3 Mental Health, did the Department preselect employees for  
4 new positions?  
5 A. No, sir. Not that I am aware of.  
6 Q. If they had, then that would have violated the  
7 Department's policy for open and fair competition, wouldn't  
8 it?  
9 A. I believe it would have, yes.  
10 Q. And it would have violated the Department's  
11 policy against discrimination and favoritism, wouldn't it?  
12 A. That is a legal matter, but I would give my lay  
13 interpretation to say that that would be a challenge, yes.  
14 Q. So your lay interpretation would be that it would  
15 be a violation of the policy against discrimination and  
16 favoritism?  
17 A. To preselect someone?  
18 Q. To preselect someone.  
19 A. Without a competitive employment practice  
20 process, for the Department in certain positions, yes. The  
21 Commissioner, no.  
22 Q. I'm sorry.  
23 A. The Commissioner, no. For the boards that we  
24 dealt with, I am not certain of how they did that, but I  
25 can tell you that there are appointments that are made in

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803/356-1990  
800/923-8899

174

1 the process both in the community system and at the senior,  
2 at the agency head level where I can't speak to whether the  
3 candidates were preselected, but I can tell you the  
4 appearance is that they had someone in mind for the job.  
5 Now the competitive processes that were installed to  
6 select, to ultimately select a candidate for the position,  
7 I don't know. But I would tell you that in an open and  
8 competitive environment to preselect someone is not the way  
9 that I would do business.  
10 Q. In an open and competitive environment, would you  
11 approve the creation of a position where only one person  
12 qualified for it?  
13 A. Where only one person qualified for it?  
14 Q. Correct.  
15 A. It would depend on the environment. It would  
16 really depend on the environment. If I were talking about  
17 a medical center and perhaps a department head for one of  
18 my specialty units, I might want to preselect someone even  
19 though it's an open and competitive environment based on  
20 what that individual might be able to do for me in that  
21 particular hospital component. The Medical Chief would be  
22 a good example of that, because you want someone who can  
23 get along with the rest of the staff, not just someone that  
24 meets the minimum requirements for the job. So you may  
25 have in mind who you might want to serve as your Chief of

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803/356-1990  
800/923-8899

1 Medical Operations.  
2 Q. Was the Departmental Assistant Personnel Manager  
3 preselected?  
4 A. No, sir.  
5 Q. Are you sure about that?  
6 A. As far as I know, it was not preselected, no,  
7 sir.  
8 Q. If the Departmental Assistant Personnel Manager  
9 had been preselected, would that violate any rules of the  
10 Department concerning fair and open competition?  
11 A. You would have to review the policy, but that  
12 would certainly violate my rules and premises and ethical  
13 practices of employment.  
14 Q. Is it your testimony then that there are ethical  
15 rules of employment outside of or in addition to a  
16 department's written practice or written policies?  
17 A. There are ethical components that I abide by and  
18 I imagine that other professionals abide by. So whether or  
19 not I appoint you to a treatise that documents those  
20 components specifically, I don't know. But to preselect  
21 someone for this type of position where we stressed that we  
22 wanted open and competitive competition for that job, I  
23 would be opposed to preselecting anyone for it.  
24 Q. Do you know if anyone was preselected for the  
25 position of Departmental Assistant Personnel Manager?

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803/356-1990  
800/923-8899

176

1 A. I don't know that.  
2 Q. Do you know if Henry Ervin preselected someone?  
3 A. No, sir. I don't know that.  
4 Q. Do you know if June Lynn preselected someone?  
5 A. No, sir. I don't know that.  
6 Q. Do you know if Commissioner Houston preselected  
7 someone?  
8 A. No, sir. I don't know that.  
9 Q. Mr. Dillihay, in your experience, did the  
10 Commissioner ever reject a recommendation of the Job  
11 Evaluation Committee?  
12 A. I don't recall anything specifically, but I do  
13 recall some that did not get his approval, yes.  
14 Q. Whose responsibility was it to set the agenda for  
15 the Job Evaluation Committee?  
16 A. To set the agenda?  
17 Q. Yes.  
18 A. That was a process that was organized and  
19 coordinated under Mr. Ervin, but the associates and their  
20 representatives to that committee gave input into what the  
21 committee's agenda might be.  
22 Q. As Associate Commissioner, did you have the  
23 authority to insist that something be placed on the agenda  
24 for that committee?  
25 A. No, sir. That was Mr. Ervin's agenda. He was

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803/356-1990  
800/923-8899

1 the Chair of that committee, not me.  
 2 Q. Could you have requested that a particular item  
 3 be placed on the agenda of the Job Evaluation Committee?  
 4 A. Yes. That was part of the process for developing  
 5 the agenda. They would send out requests of what was going  
 6 to be on that, that's my recollection of it, and they would  
 7 also send you items that were going to be reviewed at the  
 8 next meeting and people might send input and say I would  
 9 like for you to put this on there or that on there.  
 10 Q. You were Mr. Ervin's boss, is that correct?  
 11 A. Yes, sir.  
 12 Q. You completed his evaluation?  
 13 A. Yes.  
 14 Q. You filled it out?  
 15 A. Yes.  
 16 Q. You rated him?  
 17 A. Yes, sir.  
 18 Q. And he answered in the hierarchy of direct  
 19 supervision, he answered directly to you?  
 20 A. That's correct.  
 21 Q. Did Mr. Ervin ever refuse to put an item on the  
 22 Job Evaluation Committee that you had requested?  
 23 A. I don't recall specifically. I don't know.  
 24 Q. Would you expect Mr. Ervin to refuse to put an  
 25 item on the Job Evaluation Committee agenda if you had

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 803/356-1990  
 800/923-8899

178

1 requested it?  
 2 A. Say again.  
 3 Q. Would you ever expect Mr. Ervin to refuse to put  
 4 a matter on the Job Evaluation Committee agenda if you had  
 5 requested it?  
 6 A. Would I expect him to refuse to put it on there  
 7 if I requested it?  
 8 Q. That is a very poor question. I agree with you  
 9 that's a poor question. If you requested that a matter or  
 10 item be put on the Job Evaluation Committee agenda, would  
 11 you expect Mr. Ervin to put it on there?  
 12 A. Depends on the circumstances. I might request  
 13 something that is not ready to go before the Committee. I  
 14 might request something that is not possible to effectuate  
 15 as a matter of law or policy. That is what Mr. Ervin did.  
 16 He advised me in these areas, so to say I might want to  
 17 have something on the Committee like, I don't know, let's  
 18 say I want to put something about the Department making  
 19 widgets and he may not see that as an appropriate fit for  
 20 the mission and values of that organization. It was his  
 21 committee. He might say I don't think that is appropriate.  
 22 Q. Did you ever request something be put on the Job  
 23 Evaluation Committee agenda that was inappropriate?  
 24 A. Inappropriate?  
 25 Q. Correct.

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 803/356-1990  
 800/923-8899

1 A. No, sir. I never requested anything  
 2 inappropriate. At least not in my opinion that it might  
 3 have been inappropriate.  
 4 Q. But there was nothing, no matter that you  
 5 requested -- let me ask it this way -- with regard to  
 6 requesting items be put on the agenda of the Job Evaluation  
 7 Committee, Mr. Ervin never turned down one of your  
 8 requests, did he?  
 9 A. I don't know that. I am not saying that at all.  
 10 I am saying I don't have any specific recollection of it.  
 11 You have to understand over the course of these years that  
 12 I served in Alabama there were many, many Job Evaluation  
 13 Committee minutes and meetings and the specific items on  
 14 that agenda I don't know. And even more so, I have no  
 15 specific recollection of whether or not Mr. Ervin and I had  
 16 had a discussion about something that I felt might be  
 17 appropriate for that Committee's review and he felt  
 18 contrary to that. I don't have any specific recollection  
 19 of it, but I can tell you there were probably some items.  
 20 Q. But none that you can specifically recall as we  
 21 sit here?  
 22 A. I don't recall anything specifically, no, sir.  
 23 Q. You were a member of the Job Evaluation  
 24 Committee, were you not?  
 25 A. Yes.

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 803/356-1990  
 800/923-8899

180

1 Q. Whose responsibility was it to record the  
 2 meetings of the committee?  
 3 A. I don't recall. The way we did committees, each  
 4 committee Chair was responsible for selecting their own  
 5 recorders. I don't recall.  
 6 Q. The Committee Chair would select the recorder  
 7 they wanted to use?  
 8 A. As far as I know.  
 9 Q. Would that recorder be responsible for preparing  
 10 the minutes of the meeting?  
 11 A. I don't know how he did the minutes of this  
 12 meeting, I don't know.  
 13 Q. Mr. Dillihay, what is the purpose of the  
 14 Department of Human Resources at the Alabama Department of  
 15 Mental Health?  
 16 A. Purpose?  
 17 Q. What is the purpose? Well, instead of that broad  
 18 question, let me narrow it down to this. Let me give you  
 19 my assumption and you can tell me if you agree with me. I  
 20 understand that there is a Central Personnel Office?  
 21 A. Yes.  
 22 Q. At the Office of the Commissioner?  
 23 A. Yes.  
 24 Q. Is that correct?  
 25 A. Yes.

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 803/356-1990  
 800/923-8899



1 Q. And I have heard that office called Central  
2 Office?  
3 A. Okay, sir.  
4 Q. Are you familiar with that term?  
5 A. Yes, sir.  
6 Q. I am aware that as part of the Department of  
7 Human Resources, there are Personnel Offices or Personnel  
8 Officers at different facilities owned and operated by the  
9 Department of Mental Health, is that correct?  
10 A. Yes.  
11 Q. It's my understanding that the Human Resource  
12 Officers at the respective facilities report directly to  
13 the Administrator of that facility?  
14 A. As far as hiring, yes.  
15 Q. They do not report to Central Office?  
16 A. No.  
17 Q. Management-wise anyway?  
18 A. That's correct.  
19 Q. With that said then, what is the purpose of  
20 Central Office?  
21 A. The purpose of Central Office?  
22 Q. Yes.  
23 A. At the department level?  
24 Q. Yes.  
25 A. I think it's to manage the organization of the

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803/356-1990  
800/923-8899

182

1 Department of Mental Health to---  
2 Q. I'm sorry. You misunderstood. What is the  
3 purpose of the Central Human Resources Office at the  
4 Department of Mental Health?  
5 A. Their purpose was multifaceted. I don't recall  
6 specifically what that organization mission purpose was,  
7 but it was related to policy development; it was related to  
8 interpretation and guidelines of the Department; running  
9 performance analysis on the Department's personnel, both  
10 Central Office and in the field; handling issues related to  
11 benefits and employee relation matters; our EAP program,  
12 providing advice and counsel to those folks in the field.  
13 It was multifaceted as a purpose.  
14 Q. But the Central Office did not provide management  
15 supervision of Personnel Officers out in the field of  
16 respective facilities?  
17 A. Those Personnel Offices reported to the Directors  
18 of those facilities.  
19 Q. That's correct. So the Central Office did not  
20 manage or supervise the Personnel Officers at the different  
21 mental health facilities?  
22 A. I believe I answered that.  
23 Q. I just want to make sure that I'm correct.  
24 A. There were people in the field who were in charge  
25 of the personnel offices at the field that reported

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803/356-1990  
800/923-8899

1 directly to the Facility Director, I believe was the title.  
2 Q. And they did not report to Central Office?  
3 A. Not in the management hierarchy, no, sir.  
4 Q. How many people worked in Central Office?  
5 A. I don't recall.  
6 Q. Was it more than ten?  
7 A. In Central Office?  
8 Q. Yes.  
9 A. Yes. We had two floors in Central Office. I  
10 imagine it was well over, I don't know, two hundred people,  
11 I don't know.  
12 Q. We're talking about two different things. It's  
13 not your fault. Just human error. When I say Central  
14 Office I mean the Central Office of Human Resources.  
15 A. I don't recall.  
16 Q. Because if I refer to the giant office where the  
17 Commissioner is, I will call it the Commissioner's Office,  
18 so when I refer to Central Office hereafter I am referring  
19 to the Central Personnel Office.  
20 A. I don't know how many were in there.  
21 Q. Was it more than ten?  
22 A. I don't recall.  
23 Q. More than 20?  
24 A. No, sir. It wasn't more than 20, no, sir.  
25 Q. I believe you told me earlier that the Commission

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803/356-1990  
800/923-8899

184

1 sets personnel policies, is that correct, the Commissioner,  
2 I mean, the Commissioner sets personnel policies, correct?  
3 A. Sets personnel policies?  
4 Q. Is that correct?  
5 A. He approves, he's the final authority on policy.  
6 Personnel policy might be policy that is directed by the  
7 State Personnel Office. It's also policy that resides in  
8 the Policy and Procedure Manual of the Department of Mental  
9 Health. Those policies and procedures for the Department  
10 of Mental Health are signed off as final signatory  
11 authority by the Commissioner.  
12 Q. Let's define non-merit positions or exempt  
13 positions. The Commissioner ultimately sets the personnel  
14 policies regarding exempt positions, is that correct?  
15 A. For exempt, I imagine that would be an accurate  
16 statement. He approves the policies of the Department of  
17 Mental Health, and in approval of that policy and  
18 authority, whatever falls under that umbrella he would be  
19 the final authority on.  
20 Q. Is there a difference between approving and  
21 setting?  
22 A. Yes, sir. In my mind it is. Setting might  
23 involve a series of meetings and analysis and discussions  
24 and stakeholder input in setting the policy. The approval  
25 is the final act of reviewing all of those elements, and

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803/356-1990  
800/923-8899

1 once you have a final policy in place you effectuate.  
2 Q. Using your language then, the Commissioner  
3 approves the personnel policies for non-exempt positions  
4 within the Department of Mental Health?  
5 A. As far as I recall, yes.  
6 Q. And the Central Office helps implement those  
7 policies, is that correct?  
8 A. Helps implement the policies?  
9 Q. Correct.  
10 A. Yes.  
11 Q. Pardon?  
12 A. Yes.  
13 Q. In the Commissioner's Office, who handles most of  
14 the day-to-day personnel issues?  
15 A. In the Commissioner's Office?  
16 Q. Yes, sir.  
17 A. I don't know.  
18 Q. Out in the mental health facilities, who is the  
19 person that handles most of the day-to-day personnel  
20 issues?  
21 A. Which facilities are we talking about?  
22 Q. I am not looking for an individual by name. I am  
23 looking for an individual serving in a particular role.  
24 A. In the facilities, the hospitals, it would be the  
25 Hospital Director. In the mental health authorities, of

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803/356-1990  
800/923-8899

186

1 which we had contracts with, it would be the Executive  
2 Director of that mental health authority.  
3 Q. Your personnel officers in your respective  
4 facilities. Would they be the individuals that would deal  
5 with the day-to-day personnel issues?  
6 A. I imagine they would be, but that authority rests  
7 with the Facility Director.  
8 Q. But the Personnel Officer would handle the  
9 day-to-day personnel issues, correct?  
10 A. You would have to check each facility to find out  
11 how each one of those facilities are set up, governed and  
12 operated. I know that the Personnel Manager does operate  
13 off of delegated authority from that Director. And the  
14 Director of that facility is the person responsible for  
15 day-to-day management of personnel. That is my  
16 understanding.  
17 Q. It's your testimony that delegation could differ  
18 in the various facilities?  
19 A. It might. I don't know.  
20 Q. When you were working in the Commissioner's  
21 Office, during your tenure there, was the Central Personnel  
22 Office, i.e., Mr. Henry Ervin's office, mismanaged at any  
23 time?  
24 A. Mismanaged?  
25 Q. Yes, sir.

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803/356-1990  
800/923-8899

1 A. You will have to define that. I am not aware of  
2 any instance where it was mismanaged that I can recall.  
3 Q. Was the work of Mr. Henry Ervin's office  
4 unacceptable to you at any time?  
5 A. It depends on what you are talking about. Yes,  
6 sometimes they did things that were not acceptable. I  
7 would have them do it over again.  
8 Q. Such as?  
9 A. I don't know what it would be specifically. We  
10 tasked out a number of things. Policy reviews might be one  
11 of them. I know one of the other things that we reviewed  
12 were questions in the format that we used in the  
13 interviews, that questions were not related to the things  
14 that people were evaluated on, so we wanted to bring some  
15 alignment in that, and they would bring me a course of  
16 recommendations, and I would send them back to improve  
17 them. That is an example.  
18 Q. Was there any time during your tenure in the  
19 Commissioner's Office that the Central Personnel Office  
20 failed to meet standards for that office?  
21 A. Standards as set by whom?  
22 Q. By you.  
23 A. By me?  
24 Q. Or anyone else.  
25 A. Well, as I said, I think you would have to be a

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800/923-8899

188

1 little more specific about what standards you are talking  
2 about. I am not aware of any legal or other standard that  
3 was violated during my tenure, but I would have to go back  
4 and have a specific recollection of a particular  
5 circumstance.  
6 Q. Let's look back at the creation of the Assistant  
7 Departmental Personnel Manager. Were there any performance  
8 considerations as they concerned the Central Personnel  
9 Office that in your mind were to be addressed by the  
10 creation of the Assistant Departmental Personnel Manager?  
11 A. Well, I am not sure I understand your question.  
12 Q. When the position of Departmental Assistant  
13 Personnel Manager was to be created, were there any  
14 performance issues going on concerning the Department that  
15 that position was intended to help address?  
16 A. Performance issues?  
17 Q. Yes.  
18 A. As I said, one of the considerations for looking  
19 at this position was so that we could improve the overall  
20 proficiency and efficiency of the Personnel Department  
21 generally. That was a consideration that we discussed when  
22 we were talking about creating it. It wasn't that they  
23 necessarily had failed at a particular task or another but  
24 wanting to improve efficiency overall was one of the things  
25 that we did consider, but I don't recall any violation of

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803/356-1990  
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1 law or regulations that occurred on my watch related to the  
2 Personnel Office.

3 Q. And you don't recall any occasion where they  
4 failed at a particular task?

5 A. Failed at a task?

6 Q. Yes. Those are your words.

7 A. Certainly. I mean I wanted a memo done today and  
8 it didn't get done until next week. I would say that was a  
9 failure of a task, so I don't recall specifically anything.

10 Q. How would the Departmental Assistant Personnel  
11 Manager improve the overall efficiency of the Department?

12 A. Well, I think that was something that would call  
13 for some reflection on what the processes were that led up  
14 to it. As I said, one of the things we wanted to do was to  
15 make sure that we had capable people -- capable people --  
16 it's time for a break -- that we had capable employees who  
17 could ensure that the work and the quality of work that  
18 that particular division or department, rather, was charged  
19 with, got done, got done efficiently and got done quickly.

20 (Break from 2:30 to 2:40 p.m.)

21 (Back on the record.)

22 (Plaintiffs' Exhibit No. 35 was

23 pre-marked for identification.)

24 BY MR. MOZINGO:

25 Q. Mr. Dillihay, let me show you what has been

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800/923-8899

190

1 marked Plaintiffs' Exhibit 35. Have you ever seen that  
2 document before?

3 A. I don't recall seeing it, sir.

4 Q. I will represent to you that that is the First  
5 Response of the Alabama Department of Mental Health to the  
6 E.E.O.C., Charge of Discrimination filed by Ms. Owens and  
7 Ms. Hubbard. You don't recall ever seeing that document  
8 prior to today?

9 A. I don't recall the document, sir.

10 Q. Were you to your knowledge consulted, interviewed  
11 or contacted by the Alabama Department of Public Health  
12 regarding these ladies' claims prior to the date of that  
13 document? What is the date on there?

14 A. January 18, '06.

15 Q. Let me reask that question. Were you interviewed  
16 or contacted by the Alabama Department of Mental Health  
17 prior to January 2006 regarding these ladies' claims?

18 A. Was I contacted or interviewed by the Department  
19 of Mental Health? No, sir.

20 Q. Were you aware that Ms. Owens and Ms. Hubbard had  
21 filed a Notice of Discrimination with the E.E.O.C.?

22 A. Yes.

23 Q. How were you aware of that?

24 A. I don't know. Someone told me.

25 Q. Who told you?

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803/356-1990  
800/923-8899

1 A. I am not certain. It was either Legal or  
2 someone, I don't know.

3 Q. Someone with the Department of Mental Health told  
4 you?

5 A. Yes, sir. You asked me if I was contacted by the  
6 Department of Mental Health and I was not.

7 Q. So you first received notice that an E.E.O.C.  
8 Charge of Discrimination had been filed from someone with  
9 the Alabama Department of Mental Health?

10 A. Yes, sir.

11 Q. But you don't know who gave you the notice?

12 A. No, sir. I don't recall.

13 Q. Did anyone interview you regarding the alleged  
14 discrimination?

15 A. I don't recall.

16 Q. Who did you speak with regarding the alleged  
17 discrimination?

18 A. I spoke with our legal counsel, Mr. Tarver, and I  
19 spoke with my Executive Assistant, and I had conversations  
20 with Mr. Ervin and Commissioner Houston.

21 Q. Your Executive Assistant was June Lynn?

22 A. That's correct.

23 Q. What conversations did you have with Mr. Ervin?

24 A. I don't recall specifically. Just to the general  
25 nature of the complaint.

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803/356-1990  
800/923-8899

192

1 Q. How many times have you spoken with Mr. Ervin  
2 about the complaint?

3 A. I don't know.

4 Q. Can you recall any conversation with Mr. Ervin  
5 about the complaint?

6 A. Not specifically.

7 Q. Can you recall any conversation with Commissioner  
8 Houston about the complaint?

9 A. Not specifically.

10 Q. Can you recall any conversation with June Lynn  
11 about the complaint?

12 A. Not specifically, no, sir.

13 Q. Did I cover everybody? I am not going to ask you  
14 about your conversations with Mr. Tarver. You said  
15 Commissioner Houston, Mr. Ervin, June Lynn and Mr. Tarver,  
16 is that correct, those are the four that you have spoken  
17 to?

18 A. That I may have spoken to, yes.

19 Q. Other than Mr. Tarver, you can't recall any  
20 conversations you have had with Commissioner Houston,  
21 Mr. Ervin or Ms. Lynn about the E.E.O.C. complaint?

22 A. Not specifically, no, sir.

23 Q. How many times have you talked to Mr. Ervin about  
24 the complaint?

25 A. I don't recall.

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803/356-1990  
800/923-8899

1 Q. How many times have you talked to Ms. Lynn about  
2 the complaint?

3 A. I don't recall.

4 Q. How many times have you talked to Commissioner  
5 Houston about the complaint?

6 A. I don't recall.

7 Q. Were you asked to review Plaintiffs' Exhibit 35  
8 prior to it being submitted to the E.E.O.C.?

9 A. I don't recall.

10 MR. TARVER: Let me say this for the record. The  
11 way our department operates, if he had been asked, it would  
12 have been asked for by my office. Those come to us. Also,  
13 when you speak about June Lynn, she's got a double role,  
14 she is Executive Assistant to the Associate Commissioner  
15 for Administration, also is the advisory attorney to the  
16 Associate Commissioner for Administration. So keep that in  
17 mind.

18 MR. MOZINGO: I have it in mind, but I think we  
19 are going to have to clarify what role Ms. Lynn was acting  
20 in, because I am going to notice her deposition.

21 MR. NIX: Like when do you mean? What point in  
22 time?

23 MR. MOZINGO: Are you all going to take the  
24 position that any involvement she had in this case was as  
25 legal counsel?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

194

1 MR. NIX: Not any involvement.

2 MR. MOZINGO: I don't know how you can be  
3 fulfilling the role of Executive Assistant and be legal  
4 counsel at the same time. Those are two different hats.

5 MR. NIX: I haven't spoken with her about  
6 everything she did, but I mean we are not going to take the  
7 position that everything she had to do with this was his  
8 legal counsel.

9 MR. MOZINGO: But you are going to take the  
10 position she did act as legal counsel regarding some  
11 things?

12 MR. NIX: I don't know. I don't know whether she  
13 did or not.

14 MR. TARVER: We might. It depends on what you  
15 ask.

16 MR. MOZINGO: Well, that doesn't give us any  
17 standard.

18 MR. NIX: We can find out for you.

19 MR. TARVER: On a day-to-day basis, Ms. Lynn  
20 serves as both the Executive Assistant and the advisory  
21 attorney to the Associate Commissioner for Administration.  
22 That is fairly unique even within the Department, but  
23 Administration handles a lot of things that require a lot  
24 of legal assistance, so---

25 MR. NIX: What I was going to say was that she

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803/356-1990  
800/923-8899

1 was the Acting or the Interim Commissioner during this.

2 And I think that she did have some communication that is  
3 discoverable, but now that is the only thing I know of  
4 that, otherwise, I just need to talk to her and ask her.

5 MR. TARVER: Right now I brought it up because  
6 you are asking him about conversations with her. Not  
7 because I'm opposed to what you might say to her.

8 MR. MOZINGO: We are going to have to cross that  
9 bridge eventually. So that is why I'm saying we are going  
10 to have to have that conversation.

11 BY MR. MOZINGO:

12 Q. Mr. Dillihay, were you asked to give a written  
13 statement to the Department of Mental Health?

14 MR. NIX: I don't think that is discoverable. I  
15 don't think that's discoverable whether he was asked to  
16 give a written statement.

17 MR. MOZINGO: Thank you.

18 BY MR. MOZINGO:

19 Q. Did you give a written statement to the  
20 Department of Mental Health?

21 A. I don't recall.

22 Q. You don't recall if you gave a written statement?

23 A. No, sir.

24 Q. What is your understanding of my clients'  
25 complaint against you?

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803/356-1990  
800/923-8899

196

1 A. What is my understanding?

2 Q. Yes.

3 A. My understanding is that they are seeking  
4 whatever is lodged in the Summons and Complaint of this  
5 document.

6 Q. What is your understanding of that complaint?

7 A. I am not sure I am following your question.

8 Q. What do you understand that they claim you did to  
9 violate their rights?

10 A. I'm coming to grips with that. I'm really trying  
11 to figure that one out, Mr. Mozingo. I got to tell you. I  
12 don't know what my understanding of it is because I am not  
13 -- I have read the Summons and Complaint and I have read  
14 the Notice of Deposition, I have read my responses to the  
15 interrogatories. And to tell you the truth I am really not  
16 certain what they are alleging.

(Plaintiffs' Exhibit No. 36 was  
pre-marked for identification.)

19 Q. Let me show you Plaintiffs' Exhibit 36. And this  
20 is dated May 31, 2006, do you see that? And I will  
21 represent to you that that is the second response of the  
22 Department of Mental Health to the E.E.O.C. Have you seen  
23 Plaintiffs' Exhibit 36 before?

24 A. I don't recall.

25 Q. Is it possible that you have seen Plaintiffs'

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803/356-1990  
800/923-8899

1 Exhibit 35 and 36 before?  
2 A. Is it possible?  
3 Q. Is it possible?  
4 A. I imagine it is possible, Mr. Mozingo. I don't  
5 know if that would have exchanged, been part of the  
6 document exchange between my counsel and myself, and I am  
7 not certain when I -- but to say that it's a possibility,  
8 yes, there is a possibility.  
9 (Plaintiffs' Exhibit No. 37 was  
10 pre-marked for identification.)  
11 Q. Let me show you what's been marked Plaintiffs'  
12 Exhibit 37. Have you seen that document before?  
13 A. I don't recall.  
14 Q. That is the final E.E.O.C. finding with respect  
15 to Ms. Owens and Ms. Hubbard's allegation of  
16 discrimination. Do you know what the E.E.O.C. found?  
17 A. No, sir. I can read it though.  
18 Q. Other than reading what I have just put in front  
19 of you, do you know what the E.E.O.C. concluded in response  
20 to my clients' allegations?  
21 A. No, sir. I would have to read that.  
22 Q. Other than Mr. Tarver, has anyone ever told you  
23 what the E.E.O.C. concluded?  
24 A. I believe they have. I don't recall specifically  
25 what they said, but I am certain that someone has told me

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803/356-1990  
800/923-8899

198

1 about this. I don't see what is the exact date of this  
2 document. I don't see the date on it.  
3 MR. NIX: Don't worry about it. He'll ask you  
4 another question.  
5 (Plaintiffs' Exhibit No. 14 was  
6 pre-marked for identification.)  
7 BY MR. MOZINGO:  
8 Q. Let me show you what's been marked Plaintiffs'  
9 Exhibit 14. I think you brought a copy of that with you.  
10 That is your answers to the interrogatories and requests  
11 for production of documents---  
12 A. Yes.  
13 Q. ---submitted in this case, is that correct?  
14 A. That is what it says, sir, yes.  
15 Q. Did you review those answers prior to signing the  
16 response?  
17 A. I believe I did, sir.  
18 Q. If you will flip over to page, actually it's not  
19 numbered, the very last page of that document.  
20 A. Yes, sir.  
21 Q. There is a verification there, correct?  
22 A. That is correct.  
23 Q. Is that your signature?  
24 A. Yes.  
25 Q. Is that your verification?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. That is what it says, sir.  
2 Q. Are your answers and responses to the Plaintiffs'  
3 First Consolidated Discovery true and correct?  
4 A. I don't know exactly, but I would imagine to the  
5 best of my knowledge and recollection they would be, yes.  
6 Q. Would you have signed that verification if they  
7 were not true and correct?  
8 A. I would imagine that I wouldn't have, but to be  
9 able to speak to every word in this very lengthy document  
10 and tell you that it is a hundred percent accurate, I don't  
11 believe that I can do so without reviewing it a second  
12 time.  
13 Q. Was it true and accurate on the date you signed  
14 that verification?  
15 A. I would imagine to the best of my knowledge it  
16 would have been, yes.  
17 Q. Since you signed that verification, back in  
18 March, 2008, do you have any reason to believe as we sit  
19 here today that your responses to the discovery request are  
20 not true and accurate?  
21 A. I don't know specifically, but I would have to  
22 review the document to make that determination.  
23 Q. Mr. Dillihay, since you are not entirely sure  
24 what Ms. Owens and Ms. Hubbard are alleging, I will help  
25 you out a little bit. They are alleging that the job of

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

200

1 Assistant Departmental Personnel Manager was created for  
2 Marilyn Benson. They have testified to that effect. Is  
3 that true?  
4 A. No, sir.  
5 Q: Was the job of Assistant Personnel Director  
6 created with Marilyn Benson in mind?  
7 A. No, sir.  
8 Q. Did you know Marilyn Benson would apply for that  
9 job?  
10 A. No, sir.  
11 Q. Did you have any reason to expect her to apply  
12 for that job?  
13 A. Did I have any reason to expect her to apply? I  
14 don't know what I would expect her to do, but I don't know  
15 whether she would have applied for it or not.  
16 Q. Do you know according to the Department's  
17 E.E.O.C. response and according to Ms. Marilyn Benson's  
18 response she did participate in the creation of the  
19 qualifications and knowledge and skills for that position?  
20 A. No, sir. I'm not---  
21 MR. NIX: Object to the form of the question.  
22 BY MR. MOZINGO:  
23 Q. You have no knowledge that Marilyn Benson  
24 participated in the drafting of the qualifications for that  
25 job?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899



1 A. No, sir. I did not.  
2 MR. NIX: Object to the form.  
3 BY MR. MOZINGO:  
4 Q. You have no knowledge that Marilyn Benson  
5 participated in any way in the creation or defining of that  
6 job?  
7 MR. NIX: Object to the form.  
8 A. I don't recall it.  
9 Q. You don't recall it?  
10 A. No. I don't have any knowledge of that, no, sir.  
11 Q. Did Henry Ervin ever tell you that he had  
12 obtained Marilyn Benson's participation in preparing the  
13 qualifications and skills and definition for that job?  
14 A. No, sir. I don't recall that.  
15 Q. So as we sit here today, you have no memory of  
16 Marilyn Benson being involved in any way in any events that  
17 led up to the creation and/or announcement of the job of  
18 Assistant Personnel Manager?  
19 A. That is a very broad statement, Mr. Mozingo. As  
20 I said, she worked in the Personnel Department. I am not  
21 certain what processes they used in the evolution of this,  
22 whether or not she would have any connections, or what have  
23 you.  
24 Q. I think the question was do you have any  
25 knowledge of her participating?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

202

1 A. No, sir. I have no knowledge.  
2 Q. It may be a broad question, but it's talking  
3 about your knowledge.  
4 A. I don't have any knowledge.  
5 Q. Do you know as we sit here today that Marilyn  
6 Benson participated in the process that culminated the  
7 creation of that job?  
8 A. No, sir. I don't have any specific knowledge  
9 regarding that.  
10 Q. Prior to the announcement of the job of Assistant  
11 Department Personnel Manager, did you know if Marilyn  
12 Benson qualified to apply for that job?  
13 A. No, sir.  
14 Q. Prior to the announcement of the job, did you  
15 know if Joan Owens qualified---  
16 A. No, sir.  
17 Q. ---to apply for the job?  
18 A. No, sir.  
19 Q. Prior to the announcement of the position, do you  
20 know if Lynn Hubbard qualified to apply for the job?  
21 A. No, sir.  
22 Q. Are you familiar with Joan Owens' qualifications?  
23 A. No, sir. Not specifically, no.  
24 Q. Are you familiar with Lynn Hubbard's  
25 qualifications?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. No. Not specifically, no.  
2 Q. Are you familiar with Marilyn Benson's  
3 qualifications?  
4 A. Not specifically, no, sir.  
5 Q. When you worked at the Department of Mental  
6 Health, did you have access to Marilyn Benson's personnel  
7 records?  
8 A. Yes.  
9 Q. Did you have access to Joan Owens' personnel  
10 records?  
11 A. Yes, sir.  
12 Q. Did you have access to Lynn Hubbard's personnel  
13 records?  
14 A. Yes.  
15 Q. Did you have access to all personnel records at  
16 the Department?  
17 A. All?  
18 Q. Yes.  
19 A. No, sir.  
20 Q. I would imagine you wouldn't have access to  
21 Commissioner Houston's personnel records?  
22 A. No. I might have had access to Commissioner  
23 Houston's personnel records.  
24 Q. Is there any particular person's records at the  
25 Department you would not have had access to?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

204

1 A. Yes.  
2 Q. Who?  
3 A. The people who worked in our facilities.  
4 Q. Do you mean the employees that worked in your  
5 facilities?  
6 A. Yes, sir.  
7 Q. But as for the employees that worked in the  
8 Commissioner's Office, did you have access to their  
9 personnel records?  
10 A. Yes. As far as I know, yes.  
11 Q. Isn't it true and correct that those employees'  
12 qualifications and skills and knowledge would be reflected  
13 in those personnel records?  
14 A. I would imagine so, yes.  
15 Q. At any time when the job of Assistant Personnel  
16 Director was being formulated, created, and announced, did  
17 you review any employees' personnel records in relation to  
18 that job?  
19 A. No, sir.  
20 Q. As a rule of thumb, Mr. Dillihay -- before I ask  
21 that question, let me ask this question. As a personnel  
22 manager, or personnel director, or Human Resource Director  
23 as you are now---  
24 A. Yes, sir.  
25 Q. ---you compete in the marketplace for employees,

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803/356-1990  
800/923-8899

1 do you not?  
 2 A. That's correct, yes.  
 3 Q. Because there are other employers out there,  
 4 correct?  
 5 A. Yes, sir.  
 6 Q. And you compete with other employers to attract  
 7 employees?  
 8 A. Yes.  
 9 Q. As a rule of thumb, as a personnel director, when  
 10 you are trying to fill a vacant position, you would want as  
 11 many qualified persons as possible to apply for that  
 12 position, would you not?  
 13 A. That would be one of my desires, yes.  
 14 Q. Would you ever have a desire to prohibit or  
 15 preclude qualified people for applying for a job?  
 16 A. Qualified people?  
 17 Q. Yes.  
 18 A. No, sir.  
 19 Q. Are you aware that the job qualifications for  
 20 Henry Ervin's job in the Central Personnel Office allow the  
 21 substitution of experience for a college degree?  
 22 A. No, sir.  
 23 Q. You are not aware of that?  
 24 A. No, sir.  
 25 Q. Were you aware that Joan Owens, Lynn Hubbard and

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 803/356-1990  
 800/923-8899

206

1 Marilyn Benson all held the position of Personnel  
 2 Specialist III prior to the creation of the Assistant  
 3 Department Personnel Manager position?  
 4 A. I don't recall what their positions were.  
 5 Q. Do you recall that Joan Owens, Lynn Hubbard and  
 6 Marilyn Benson all worked in the Central Personnel Office  
 7 under Henry Ervin?  
 8 A. Yes, sir. I was aware of that.  
 9 Q. Are you aware that the qualifications for the  
 10 position of Assistant Personnel Department Manager do not  
 11 allow the substitution of experience for a college degree?  
 12 A. Yes, sir. I am aware of that.  
 13 Q. How are you aware of that?  
 14 A. By the many documents that I have reviewed.  
 15 Q. When you say by the many documents you reviewed,  
 16 are you talking about the many documents you reviewed  
 17 today?  
 18 A. During the course of this exchange.  
 19 Q. What exchange?  
 20 A. The exchange since the discovery process has  
 21 begun.  
 22 Q. Since this lawsuit?  
 23 A. Yes, sir.  
 24 Q. Were you aware prior to this lawsuit that the  
 25 qualifications for Assistant Department Personnel Manager

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 803/356-1990  
 800/923-8899

1 did not contain a substitution provision?  
 2 A. I believe I was, yes.  
 3 Q. How were you aware of that?  
 4 A. Through discussions about the subject.  
 5 Q. Discussions?  
 6 A. Through the Job Evaluation Review Committee and  
 7 through various discussions that I have had on the subject.  
 8 Q. Did the Job Evaluation Committee consider the  
 9 qualifications for the Assistant Department Personnel  
 10 Manager?  
 11 A. Did they consider it?  
 12 Q. Did they consider the qualifications?  
 13 A. I don't know what the considerations were. I  
 14 know that was part of the packets that was put together for  
 15 that committee and it was reviewed. Now whether or not  
 16 that consideration weighed one way or the other in their  
 17 approval of that, I don't recall.  
 18 Q. Were the qualifications for the Assistant  
 19 Personnel Department Manager presented to the Job  
 20 Evaluation Committee for review and approval?  
 21 A. I believe it was. I am not certain but I believe  
 22 it was.  
 23 Q. When?  
 24 A. I don't know. You will have to review the  
 25 minutes.

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 803/356-1990  
 800/923-8899

208

1 Q. Have you reviewed the minutes?  
 2 A. I reviewed the minutes when I was a member of the  
 3 Job Evaluation Committee, yes.  
 4 Q. Since this lawsuit was filed have you reviewed  
 5 the minutes?  
 6 A. Not in detail, no, sir.  
 7 Q. But you have reviewed them?  
 8 A. As I said, while I was a member of that committee  
 9 I reviewed the minutes.  
 10 Q. Since this lawsuit was filed, have you reviewed  
 11 the minutes?  
 12 A. I don't recall specifically if I've reviewed the  
 13 minutes, no, sir.  
 14 Q. Have you seen any minutes where those  
 15 qualifications were approved by the Job Evaluation  
 16 Committee?  
 17 A. I don't recall, but I believe that I did see  
 18 where the position was approved.  
 19 Q. There is a difference between approving a  
 20 position and approving the qualifications for a position,  
 21 correct?  
 22 A. What would that difference be, Mr. Mozingo? I am  
 23 not certain of that.  
 24 Q. Well, you can approve the creation of a position  
 25 before you approve the qualifications for that position,

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 803/356-1990  
 800/923-8899

1 correct?  
2 A. I imagine that is possible. But I am not certain  
3 that was the chronology here.  
4 Q. Do you know when the qualifications for the  
5 position here were approved?  
6 A. No, sir.  
7 Q. Would it have been before the State Personnel  
8 Department---  
9 A. I don't know.  
10 Q. ---accepted the creation of that position?  
11 A. I don't recall.  
12 Q. Would it have been before Commissioner Houston  
13 approved that position?  
14 A. Would the Job Evaluation Committee have done it?  
15 Q. No. Before Commissioner Houston. Listen to my  
16 question. Would the qualifications for that position have  
17 been established before Commissioner Houston approved the  
18 creation of the position?  
19 A. I am not certain. I don't know.  
20 Q. Do you understand there can be two different  
21 things?  
22 A. Yes, sir.  
23 Q. You can approve the creation of a job, correct?  
24 Correct?  
25 A. Yes, sir.

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803/356-1990  
800/923-8899

210

1 Q. And you can come back at a later date and approve  
2 the qualifications for that job, can you not?  
3 A. I don't know. I would have to go back and look  
4 through the policies and procedures of the Department and  
5 see what that process is like.  
6 Q. Is it possible, Mr. Dillihay?  
7 A. As I said, I imagine it might be possible, but I  
8 am not certain what the Department did in its policy as it  
9 relates to what step came before the other.  
10 Q. Would you have to rely or have to review those  
11 policies and procedures in order to answer my question?  
12 A. Yes, sir.  
13 Q. Did you approve the qualifications for the  
14 Assistant Personnel Manager position excluding the  
15 substitution clause?  
16 A. Did I approve it?  
17 Q. Did you approve those qualifications? Let me ask  
18 it this way. I know there are always better ways to ask  
19 questions and I don't claim to be the best person at asking  
20 questions. Did you approve the omission of the  
21 substitution clause from the qualifications for the  
22 Assistant Department Personnel Manager position?  
23 A. Again, I don't -- I don't have the policy and  
24 regulations in front of me as to who gave final approval.  
25 Q. I am not asking what the policy says. I am

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803/356-1990  
800/923-8899

1 asking did you approve the omission of that clause from the  
2 qualifications for that position?  
3 A. I concurred with it.  
4 Q. You concurred with it?  
5 A. Yes. Now whether or not I had a step in the  
6 approval process, and I see a difference in concurring with  
7 an idea and having final approval as we have talked about.  
8 I don't know if in this step of creation if I had final  
9 approval, but I did concur with it.  
10 Q. Whose idea was it to exclude---  
11 A. I don't know.  
12 Q. ---that clause?  
13 A. I don't know. But I can tell you that there were  
14 many people who felt that substitution should not be  
15 allowed for that position.  
16 Q. Why?  
17 A. Well, for one, given the availability of the  
18 available pool of people who might qualify under those  
19 conditions.  
20 Q. What does that mean?  
21 A. What does that mean?  
22 Q. Yes.  
23 A. Who can you cast your net, where can you cast  
24 your net to find people who meet the qualifications. We  
25 were in Montgomery, Alabama. There is a number of major

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803/356-1990  
800/923-8899

212

1 institutions, educational institutions in Montgomery. It's  
2 the center of government for that city. We had Maxwell Air  
3 Force Base available to us. We had the people, any of  
4 which had a number of people in our community mental health  
5 system who would have been approved and qualified for that  
6 position. We had a number of people who worked in our  
7 facilities who would have met the minimum qualifications of  
8 that position without substitution.  
9 Q. How do you know that?  
10 A. How do I know that?  
11 Q. Yes.  
12 A. I know that because I have an awareness of what  
13 the structure is.  
14 Q. And you have an awareness of what particular  
15 peoples' qualifications are?  
16 A. I have an awareness of what people, through my  
17 interactions with folks in Alabama that I believe that they  
18 have shared with me that they were college graduates, that  
19 they had requisite experience in the area and that they  
20 would meet the qualifications of those. I have an  
21 awareness of, again, knowing that the many educational  
22 institutions that were in and around Montgomery would  
23 provide for us a number of people to select from and we  
24 routinely drew from the military people who qualified both  
25 from the degree and experience factor that met those

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 qualifications.  
2 Q. Mr. Dillihay, given what you have just said then,  
3 how would have including the substitution provision have  
4 prevented the Department from finding qualified people for  
5 that opening?

6 A. I don't think it would have precluded  
7 necessarily. I believe it may have included or been an  
8 inclusion to that process.

9 As I said, one of the challenges that we  
10 were faced with at the Department in the Human Resources  
11 Division was how do we promote efficiency in that process.  
12 The same way that I have done in every environment that I  
13 have ever worked in, we want to make sure that because of  
14 the costs associated with advertising and reviewing  
15 prospective applicants for a job that we do as much target  
16 marketing towards that particular base of qualified  
17 applicants that we can, and as part of that process we  
18 don't want to waste staff time and resources reviewing  
19 applicants that we know might be drawn from an available  
20 employment base by reviewing those applicants that don't  
21 meet our standard qualifications. We felt that if, in  
22 fact, that were the case, if we had a position that was  
23 hard to recruit, that was difficult to retain people in it,  
24 that perhaps substitution might be an available resource we  
25 want to draw on. But we had no feelings, at least I

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

214

1 didn't, that we would be able to cast our nets on the first  
2 or second try and find a number of qualified people who  
3 were college educated, who were experienced in that area to  
4 apply for that job, because we did not want to waste staff  
5 time going through the filtering process to get down to  
6 that core of folks that we felt might be best suited to  
7 fill that position.

8 Q. You said that you had no concern that you would  
9 find a number of people---

10 A. Yes, sir.

11 Q. ---who would qualify for that position?

12 A. Yes.

13 Q. Define for me a number of people. How many would  
14 that be?

15 A. I don't know. Anything that would be  
16 representative of a group of suitable employment  
17 candidates.

18 Q. Well, when you were announcing a job, what is the  
19 number of people you would like to apply? What is the  
20 number of the people in the applicant pool that you, Henry  
21 Ervin, would like to have?

22 A. I don't know what Henry Ervin would like.

23 Q. I'm sorry. You, Otha Dillihay. For the record,  
24 it's late in the afternoon.

25 A. I don't know for that job. What I would like to

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803/356-1990  
800/923-8899

1 do is whenever I cast my net to look at suitable candidates  
2 for a position is that I get a requisite response back that  
3 shows me I have an adequate pool of people that I can draw  
4 down on and get to two or three. Three is normally the  
5 number that I look for of highly qualified applicants that  
6 I can put forth candidates for a position. So I don't  
7 think I have to cast my net and get a thousand people. I  
8 don't think I have to necessarily cast my net and get 25  
9 people. It just depends on what job, what the  
10 circumstances are, and what we anticipate what might be the  
11 available reservoir from which we will draw from.

12 Q. How many applicants did you anticipate there  
13 would be for the position of Assistant Department Personnel  
14 Manager?

15 A. I had no idea.

16 Q. Did you give any thoughts?

17 A. How many applicants?

18 Q. Yes.

19 A. No.

20 Q. You are speaking of your pool and net and  
21 applicants to draw from?

22 A. Yes.

23 Q. How many did you think you would draw?

24 A. I don't have a number. I don't know.

25 Q. Is it your testimony you only want to draw three?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

216

1 A. No, sir. I only want to get down to three.

2 Three highly qualified candidates who we put before a panel  
3 to be selected as the next person for that job.

4 Q. How do you define a highly qualified candidate?

5 A. The candidate that meets the qualifications at a  
6 minimal sense, the candidate that in the interviewer's  
7 perspective feels might be a good fit or a good leader for  
8 that organization.

9 Q. So a highly qualified candidate is a candidate  
10 that meets qualifications for that position?

11 A. Meets the minimum qualifications for that  
12 position and possesses other traits and characteristics  
13 that tells me they would be a good fit and good leader for  
14 the organization.

15 Q. And the minimum qualifications for this position  
16 was established by you, Henry Ervin and Commissioner  
17 Houston.

18 A. No.

19 Q. They weren't?

20 A. Me, the Commissioner and whoever else signed off  
21 on that piece of paper where that position was established  
22 all concurred that those qualifications were suitable.

23 Q. That would be Plaintiffs' Exhibit 18?

24 A. Yes, sir.

25 Q. All right. Well, pull it out.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. I don't have it.  
 2 Q. It should be. I didn't take it back from you, so  
 3 it should be in that stack. I have my copy. It's not  
 4 marked as an exhibit, but I will tell you the signatures  
 5 that I see. I see the signatures on this as yours, as you  
 6 testified earlier.  
 7 A. Yes.  
 8 Q. Henry Ervin, John M. Houston and one other,  
 9 Terese N. Toby. And above her signature, it says "as  
 10 approved by the State Finance Director/Budgetary  
 11 Authority." Is that who Terese Toby is with?  
 12 A. I don't know who Terese Toby is with.  
 13 Q. Those are the four names on here and you don't  
 14 know Terese Toby, correct?  
 15 A. I don't. Well, I don't know if I know her. I  
 16 don't recall who she would be.  
 17 Q. Do you have any idea who she could be?  
 18 A. No, sir.  
 19 Q. So this position was approved by you, John  
 20 Houston and Henry Ervin, correct?  
 21 A. The position was approved by John Houston,  
 22 Commissioner. It was recommended by Mr. Ervin and myself  
 23 for approval.  
 24 Q. So you and Mr. Ervin recommended it and John  
 25 Houston approved it?

COLUMBIA TRANSCRIPTS, INC.  
 803/356-1990  
 800/923-8899

218

1 A. Yes.  
 2 Q. Is that correct?  
 3 A. Yes.  
 4 Q. Did you approve it where the qualifications  
 5 omitted the substitution clause?  
 6 A. If you say so. I don't know what was attached to  
 7 that document.  
 8 Q. So you only would have approved it based upon  
 9 what was attached to Plaintiffs' Exhibit 18?  
 10 A. Again, I didn't approve it. I only would have  
 11 reviewed it and signed it had there been additional support  
 12 documentation.  
 13 Q. You only would have recommended it--  
 14 A. Yes, sir.  
 15 Q. ---based upon what was attached to Exhibit 18?  
 16 A. Whatever that may have been, yes, sir.  
 17 MR. MOZINGO: Chip, do you all know what was  
 18 attached to that? I can go back and look in my file.  
 19 MR. NIX: I do not personally know at this point,  
 20 but I can try to find out for you.  
 21 MR. MOZINGO: Would you do that?  
 22 MR. NIX: Sure.  
 23 MR. MOZINGO: We might have to let a witness  
 24 testify to that, but I don't know.  
 25 MR. NIX: I will be glad to. I will try to find

COLUMBIA TRANSCRIPTS, INC.  
 803/356-1990  
 800/923-8899

1 out.  
 2 MR. MOZINGO: It doesn't cross-reference anything  
 3 to tell me.  
 4 BY MR. MOZINGO:  
 5 Q. Were you saying there may not have been anything  
 6 attached to it, Mr. Dillihay?  
 7 A. If I received a piece of paper like that and I  
 8 was asked to sign it, I would go and ask what am I signing,  
 9 what does all this mean. The only thing on that piece of  
 10 paper is a set of codes and a couple of names and I am not  
 11 in the habit of just signing things without asking some  
 12 questions about it. So I don't know what would have come,  
 13 whether it would have been attached or if I asked for it  
 14 after the fact, but I am not in the habit of signing just  
 15 blank pieces of paper.  
 16 Q. Is it possible then that you signed Plaintiffs'  
 17 Exhibit 18 without anything being attached to it?  
 18 A. It's possible that I signed it without anything  
 19 being attached to it, yes.  
 20 Q. And you would have signed it based upon someone's  
 21 recommendation, is that correct? Did I hear you say  
 22 that---  
 23 A. No.  
 24 Q. ---someone---  
 25 A. No, sir. I didn't say that at all. I said that

COLUMBIA TRANSCRIPTS, INC.  
 803/356-1990  
 800/923-8899

220

1 Mr. Ervin as the Personnel Director makes a recommendation  
 2 that comes up the chain of command through the Associate  
 3 Commissioner for Administration, and the Commissioner has  
 4 final approval authority.  
 5 Q. Mr. Dillihay, for the position of Assistant  
 6 Department Personnel Manager, can you have a highly  
 7 qualified person who does not have the required degree?  
 8 A. Yes.  
 9 Q. Isn't it possible to have highly qualified people  
 10 based upon working experience alone?  
 11 A. Yes.  
 12 Q. Were you aware that Ms. Joan Owens has  
 13 approximately 30 years in Human Resource experience?  
 14 A. No, sir.  
 15 Q. Were you aware that Ms. Joan Owens was the  
 16 Personnel Director for a hospital?  
 17 A. No, sir. Not specifically.  
 18 Q. Were you aware that Joan Owens had responsibility  
 19 for four separate departments in the hospital?  
 20 A. No, sir.  
 21 Q. Were you aware that Joan Owens has supervised as  
 22 many as 19 to 20 people directly?  
 23 A. No, sir. I was not.  
 24 Q. Are you aware that Joan Owens has served as  
 25 Acting Personnel Director for Department Health Care

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 803/356-1990  
 800/923-8899



1 Facilities.  
2 A. No, sir. I was not.  
3 Q. Were you aware that Joan Owens had asked that the  
4 substitution clause be inserted for this position so she  
5 could apply?  
6 A. No, sir. I was not.  
7 Q. You were never told that?  
8 A. No, sir. Not by her. After the fact I have  
9 heard that she asked someone about it after I had gone over  
10 to M.R.  
11 Q. Knowing what I just told you about Joan Owens, do  
12 you think it would have been a good idea that the  
13 Department at least have the benefit of her application---  
14 A. No, sir.  
15 Q. ---in considering---  
16 A. Absolutely not.  
17 Q. ---candidates for this position?  
18 A. Absolutely not.  
19 Q. Why not?  
20 A. Because Ms. Owens, in her previous employment, I  
21 have gone down, I've reviewed the records of that hospital  
22 that is now closed, and she would not have been the type of  
23 person I would have recommended for that position.  
24 Q. What hospital that's now closed?  
25 A. Whatever hospital that she worked in, in the

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803/356-1990  
800/923-8899

222

1 Mental Retardation facility.  
2 Q. No, she worked at a hospital prior to being  
3 employed with the Department of Mental Health.  
4 A. I am speaking of the Department of Mental Health  
5 and her experience at one of our facilities.  
6 Q. So you would not want her to apply based upon  
7 that?  
8 A. I didn't say I wouldn't want her to apply. We  
9 have people that apply who are not qualified all the time,  
10 all the time, and that's in every job that I've been in.  
11 The minimum qualifications are set out for the applicant's  
12 information as well as the confirmation of what the  
13 organization is looking for. It in no way precludes Ms.  
14 Owens, Ms. Hubbard or anyone else from making an  
15 application to the Department of Mental Health, and just  
16 like I can go and show you things in my school district. I  
17 can take you to the Department of Mental Health and show  
18 you many, many applications for positions of which the  
19 people who are applying for those positions don't meet the  
20 minimum qualifications.  
21 Q. I guess it all depends on how you define the  
22 minimum qualifications, doesn't it?  
23 A. No, sir. It doesn't depend on it at all. I had  
24 people who applied for the Superintendency for the School  
25 District who never even graduated from college and the

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 minimum qualifications clearly say you would have to have a  
2 terminal degree.  
3 Q. But you can include a substitution provision,  
4 correct?  
5 A. Any organization can do whatever it sees fit for  
6 the betterment of its business enterprise.  
7 Q. And your testimony is that you did not include it  
8 for this position because you believe you could cast your  
9 net wide enough without having it, is that your testimony?  
10 A. Yes, sir.  
11 Q. Do you know only five people applied for this  
12 position?  
13 A. I don't know how many people applied for it.  
14 When people started applying for this position, I was  
15 somewhere else working.  
16 Q. Do you know that it was re-announced?  
17 A. No, sir. I think I have heard that since then  
18 that it was re-announced.  
19 Q. Would there have been any harm to the Department  
20 if Joan Owens or Lynn Hubbard had had an opportunity to  
21 apply for this position?  
22 A. Would it have been any harm?  
23 Q. Yes.  
24 A. Other than a waste of staff resources, which I  
25 consider to be very valuable to that organization, I can't

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

224

1 think of anything I would say. And even with the  
2 qualifications being there, I don't think I would have had  
3 any objection to them applying, but the same way I wouldn't  
4 want to waste the candidate's time I wouldn't want to waste  
5 the Department's resources.  
6 Q. So including the substitution clause would have  
7 wasted the Department's resources?  
8 A. I'm not saying that. What we were trying to do  
9 was promote efficiency in the Department and in doing so as  
10 we developed our announcements and the process for which we  
11 announced, we wanted to have the most efficient process  
12 possible.  
13 Q. So promoting efficiency in the Department means  
14 excluding the substitution clause?  
15 A. No, sir. That's not what promoting efficiency in  
16 the Department means. Not at all. Promoting efficiency in  
17 the Department is a general term that says that every  
18 process within the work, every step within the work process  
19 is done as efficiently as you can possibly do.  
20 Q. So it is inefficient to have a substitution  
21 clause?  
22 A. I am not saying that, sir. I thought I answered  
23 that question earlier that there are some positions where  
24 they might be difficult to recruit and difficult to retain  
25 people, candidates for those positions. If that were the

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803/356-1990  
800/923-8899

1 case, then I felt that substitution would be appropriate.  
2 That could be a matter of locality because of the  
3 remoteness of a location, it could be that you have an  
4 abundance of qualified people to be a prospective candidate  
5 for a job, and it could mean that the job itself was on  
6 such a low level that some of the things that we value with  
7 the education process are not necessary. So substitution  
8 for experience is an appropriate resource that you use, but  
9 I think it has to be taken into account for every job you  
10 are looking at.

11 Q. Would substitution be appropriate if other jobs  
12 in that classification allowed substitution?

13 A. Would it be appropriate if other jobs in the  
14 classification allowed for it?

15 Q. Would it be appropriate to include  
16 substitution---

17 A. Again, if it were in a remote area where we might  
18 have difficulty recruiting and retaining people, yes.

19 Q. So it's your philosophy that you only include  
20 substitution in a job for a remote area where---

21 A. No. That is not my statement. I thought I made  
22 my statement very clear.

23 Q. Well, that's what you just said. I'm trying to  
24 understand.

25 A. I gave you an example of when that might be

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

226

1 appropriate. Again, if there is a difficult to recruit or  
2 difficult to retain job, substitution might be appropriate.

3 Q. Are administrators in the Department of Mental  
4 Health difficult to recruit?

5 A. Are administrators?

6 Q. Yes.

7 A. No, sir. I don't think they are difficult to  
8 recruit.

9 Q. Isn't there an administrative series in the  
10 Department of Mental Health?

11 A. Yes.

12 Q. Is it difficult to recruit for positions in that  
13 series?

14 A. Now? I don't know.

15 Q. Then.

16 A. No. Well, it depends on what job we are talking  
17 about. If we were talking about information systems, the  
18 answer to the question is yes. If we're talking about  
19 legal counsel, the answer is yes. If we're talking about  
20 medical chiefs and other things that related to our  
21 administrative structure, the answer is yes, it was  
22 difficult.

23 Q. Was it difficult to obtain or recruit  
24 administrators at facilities in Tuscaloosa County?

25 A. I don't know about Tuscaloosa specifically. But

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803/356-1990  
800/923-8899

1 again, Tuscaloosa is a different locale. I don't recall  
2 that being a problem but I am not certain.

3 Q. You would expect to have more mental health  
4 experienced employees in Tuscaloosa County than any other  
5 county in the State of Alabama, wouldn't you?

6 A. Why would I expect that?

7 Q. Aren't the two largest mental health facilities  
8 in the State of Alabama in Tuscaloosa County?

9 A. Yes.

10 Q. Don't you know that?

11 A. Yes, sir. So I would expect because they're the  
12 largest facility doesn't mean that I have the largest  
13 administrative staff to draw from in that particular  
14 county. Keep in mind that the bulk of our employee base  
15 are not administrative managers.

16 Q. There is a major university in Tuscaloosa County?

17 A. Yes.

18 Q. One of the largest in the state, correct?

19 A. I have heard of it.

20 Q. And you're 50 miles from Birmingham.

21 A. I've heard of it.

22 Q. Which is one of the largest health care industry  
23 cities in this United States, isn't it?

24 A. I'm told.

25 Q. So is it difficult to recruit facility

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803/356-1990  
800/923-8899

228

1 administrators in Tuscaloosa County?

2 A. I imagine it would be, yes.

3 Q. You think it would be?

4 A. Yes, sir. For those reasons you just  
5 articulated.

6 Q. But it would not be difficult to recruit  
7 individuals like Assistant Department Personnel Manager in  
8 Montgomery County where you do not have a major health  
9 institution as in Birmingham, you do not have major mental  
10 health facilities as you do in Tuscaloosa, you do not have  
11 major universities as you do in Tuscaloosa, is that right?

12 A. That it would not be difficult to recruit?

13 Q. Correct.

14 A. Well, in addition to that, we are a center of  
15 governance in Alabama. You have most of your state  
16 agencies there that have a working knowledge of the  
17 Department's policies and processes with Medicaid, we have  
18 Public Health that had an understanding of what went on  
19 there. Again, we have Maxwell Air Force Base that was  
20 available to us where we drew very largely from for  
21 personnel, and we did have, I believe, four or five major  
22 colleges and universities there. So no, I don't think it's  
23 difficult to recruit and retain an Assistant Personnel  
24 Director from those ranks, no, sir.

25 Q. If I understand your testimony correctly, you

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803/356-1990  
800/923-8899

1 would not be in favor of Joan Owens being given the  
 2 position of Assistant Department Personnel Manager, is that  
 3 correct?  
 4 A. I would be in favor of it?  
 5 Q. You would not be.  
 6 A. I don't know if can say I was in favor of it one  
 7 way or another. I wasn't involved in the selection  
 8 process, not at all. I wasn't involved in the application  
 9 process.  
 10 Q. That's because the qualifications were written  
 11 for a third party to apply in the interview and selection  
 12 process, correct?  
 13 A. No. That's because I wasn't involved. That's  
 14 why.  
 15 Q. But you were involved in the qualifications being  
 16 written?  
 17 A. Yes, sir.  
 18 Q. And a third party actually applies those  
 19 qualifications to the candidate pool or the applications  
 20 that are submitted, correct?  
 21 A. As far as I know.  
 22 Q. And you are not involved in that process?  
 23 A. No, sir.  
 24 Q. And that third party takes those applications and  
 25 conducts interviews and recommends a particular person be

COLUMBIA TRANSCRIPTS, INC.  
 803/356-1990  
 800/923-8899

230

1 hired for that position, correct?  
 2 A. That's my recollection of the process.  
 3 Q. And you're not involved in that process?  
 4 A. I was not involved related to this case, no, sir.  
 5 Q. So you have no control over who that third party  
 6 eventually recommends be given the job, do you?  
 7 A. I wasn't involved in the process.  
 8 Q. But as Assistant or Associate Commissioner for  
 9 the Department of Mental Health you would have no control  
 10 over who that third party would eventually recommend be  
 11 given the position of Assistant Department Personnel  
 12 Director?  
 13 A. I would have no control over it?  
 14 Q. That's correct.  
 15 A. The final approval authority rests with the  
 16 Commissioner. My job was to make a recommendation to the  
 17 Commissioner.  
 18 Q. But you don't make a recommendation to the  
 19 Commissioner until the third party has made a  
 20 recommendation to you as to who should be hired for that  
 21 position, right?  
 22 MR. NIX: I object to the form of that.  
 23 A. No, not at all. I think you've got all things  
 24 mixed up.  
 25 MR. NIX: That doesn't follow. I think what he

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 803/356-1990  
 800/923-8899

1 was talking about was the spec, Flynn, not the ultimate  
 2 recommendation of whoever did the interviews and stuff.  
 3 BY MR. MOZINGO:  
 4 Q. Were the qualifications for the position of  
 5 Departmental Assistant Personnel Manager written to prefer  
 6 one particular employee?  
 7 A. No, sir.  
 8 Q. Were they written to ensure that one particular  
 9 employee was the most qualified?  
 10 A. No, sir.  
 11 Q. I want to make sure I understand what you told me  
 12 earlier about promoting the overall efficiency of the  
 13 Department. I have heard you say those words.  
 14 A. Yes, sir.  
 15 Q. In the creation of the job of Departmental  
 16 Assistant Personnel Manager, how would the creation of that  
 17 job promote the overall efficiency of the Personnel  
 18 Department?  
 19 A. Well, I don't recall specifically what the  
 20 thoughts and ideas were. But again, getting a highly  
 21 capable, highly qualified, energetic individual to assume  
 22 those duties and responsibilities, part of their charge  
 23 would be to promote efficiency throughout that department.  
 24 Q. Can you find such a person, a highly capable,  
 25 highly qualified person, who can meet your objective of

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 803/356-1990  
 800/923-8899

232

1 promoting the efficiency of the Department who has no  
 2 college degree but plenty of experience?  
 3 A. Can I find someone?  
 4 Q. Is it possible to find such a person?  
 5 A. To say it's possible, I guess it is possible,  
 6 sir.  
 7 Q. Is it possible such people exist who can promote  
 8 that efficiency based upon their experience alone,  
 9 irrespective of some degree?  
 10 A. I would say it's possible, yes.  
 11 Q. What do you mean by the organizational structure  
 12 for the Human Resource Department was flat? What does that  
 13 mean?  
 14 A. I think you articulated the positions that each  
 15 one of these people held were all on the same level or  
 16 something to that. I don't recall specifically what you  
 17 said. But you mainly had Mr. Ervin at the top and then  
 18 everybody else.  
 19 Q. Is there some rule of thumb that so many people  
 20 in a department makes it a flat level?  
 21 A. No, sir. No rule of thumb that I am aware of. I  
 22 think you can look at the organizational structure, the  
 23 duties and responsibilities as they are charged and then  
 24 you have to make that determination.  
 25 Q. In this case, there were only, including

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 803/356-1990  
 800/923-8899

1 Mr. Ervin, five or six employees in the whole department,  
2 correct?  
3 A. What's that?  
4 Q. In this case, with the Personnel Department in  
5 this case, the Central Personnel Office back when you were  
6 working there, there were only five or six employees in the  
7 whole department including Mr. Ervin, weren't they?  
8 A. I don't recall who was in that department.  
9 Q. Would it be important to recall that if the  
10 Department is flat or was flat, as you said?  
11 A. Would it be important to recall it based on the  
12 numbers as to whether it was flat?  
13 MR. NIX: Now?  
14 MR. MOZINGO: No. Then.  
15 A. I don't know, but it wasn't the numbers that  
16 drove that. It was the efficiency and makeup of the unit  
17 itself.  
18 Q. So it wasn't the number itself that made it flat?  
19 A. Right.  
20 Q. It had to do with the efficiency?  
21 A. Right.  
22 Q. How was that that Department inefficient prior to  
23 the creation of the assistant's position?  
24 A. If Mr. Ervin was out, who's in charge? Who do I  
25 go to for particular matters that I needed to be handled on

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803/356-1990  
800/923-8899

234

1 an Ad Hoc and on an expedited basis?  
2 Q. Could it be whenever Mr. Ervin left in charge  
3 while he was out?  
4 A. It could be if he had the opportunity to do that,  
5 but if his absence was spontaneous, which it was at some  
6 time, that was not always available.  
7 Q. Well, was his spontaneous absence of such a  
8 nature that you considered it a problem?  
9 A. No, sir.  
10 Q. In any occasion in which Mr. Ervin was absent,  
11 did you ever go to Ms. Owens for assistance?  
12 A. I'm quite sure I did.  
13 Q. Did Ms. Owens ever fail to give you the  
14 assistance you needed?  
15 A. I'm sure she may have.  
16 Q. Did you ever go to Ms. Hubbard for assistance?  
17 A. I'm quite certain I did.  
18 Q. Did she ever fail to give you the assistance you  
19 needed?  
20 A. I'm quite certain she may have.  
21 Q. She may have failed?  
22 A. She may have failed.  
23 Q. And Ms. Owens may have failed?  
24 A. Yes.  
25 Q. Can you recall a specific time they failed to

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803/356-1990  
800/923-8899

1 give you the assistance you needed?  
2 A. No. Not specifically.  
3 Q. Because I want to know. We can talk about may  
4 have and could have all day long. I want to know did it  
5 happen?  
6 A. Well, you will have to pull out the videotape,  
7 Mr. Mozingo, because I can't remember that far back.  
8 Q. Do you have a videotape?  
9 A. No, sir. I don't have any videotape.  
10 Q. But you can't recall an incident where Ms. Owens  
11 failed to help you when you needed assistance?  
12 A. Not specifically, no.  
13 Q. And you can't recall an instance when Ms. Hubbard  
14 failed to help you when you needed assistance?  
15 A. Not specific instance, no, sir.  
16 Q. Who did you primarily go to for assistance if  
17 Mr. Ervin wasn't there?  
18 A. Whoever might have been dealing with a particular  
19 issue that came up at a particular time. And who may have  
20 been available at the time. Sometimes I would look around  
21 and there would be one or two people in that office.  
22 Q. You mentioned earlier that you had reviewed or  
23 were aware of the personnel records of Ms. Owens at one of  
24 the facilities that she closed, correct?  
25 A. No. She didn't close the facility. The facility

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803/356-1990  
800/923-8899

236

1 was closed. We were asked to go down and take a look at  
2 the records and when I was going through the records that  
3 were warehoused for that particular facility is what I am  
4 referring to, personnel records.  
5 Q. What was the problem, was there a problem with  
6 the records that you saw?  
7 A. They certainly wouldn't have met my standard for  
8 excellence, no, sir.  
9 Q. The records themselves?  
10 A. The records.  
11 Q. Or how they were stored?  
12 A. The records themselves, how they were stored, the  
13 maintenance of those files, all of those things.  
14 Q. What facility are you talking about?  
15 A. Whichever one she was the person, whatever you  
16 said she was, at the facility. I know that she was at one  
17 facility that was closed. I believe that is how she came  
18 to Central Office.  
19 Q. So those records would not have met your  
20 standards?  
21 A. No, sir.  
22 Q. Prior to your position today with the School  
23 District, had you ever worked directly as a Personnel  
24 Officer?  
25 A. No, sir.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 Q. Have you ever worked directly as a Personnel  
2 Director?  
3 A. No, sir.  
4 Q. How about Ms. Hubbard, was there any reason you  
5 think that -- I want to ask it this way -- Do you have any  
6 criticism of Ms. Hubbard's work product, her  
7 professionalism, or her overall satisfactory performance  
8 with the Department of Mental Health? I'm striking. I  
9 started to ask two things in one. I don't need to do that.  
10 Do you have any criticisms of Ms. Hubbard in her  
11 performance with the Department of Mental Health?  
12 A. Now or then?  
13 Q. Then.  
14 A. I don't have any criticism of either of these  
15 ladies' performance during that time, Ms. Hubbard or Ms.  
16 Owens.  
17 Q. Did you ever review the personnel records kept at  
18 Central Office?  
19 A. Did I ever review every record in the Central  
20 Office, no, sir. I would review records on an as needed  
21 basis.  
22 Q. Did the condition of the records at the Central  
23 Personnel Office meet with your approval?  
24 A. No, sir.  
25 Q. They did not?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

238

1 A. No, sir.  
2 Q. Who was responsible for maintaining those  
3 records?  
4 A. Ultimately it was me. But by delegation, it  
5 would have been Personnel Office.  
6 Q. Before you it would have been Mr. Ervin, correct?  
7 A. Before me it would have been the other Associate  
8 Commissioner. That's where that authority is delegated.  
9 Q. But before that authority gets to you, it's  
10 Mr. Ervin's job to maintain the personnel records or to  
11 make sure that they're maintained, right, and it's your job  
12 to make sure that he does his job, is that correct?  
13 A. Yes, sir.  
14 Q. So if the personnel records in the Central  
15 Personnel Office didn't meet with your approval, first and  
16 foremost it was Mr. Ervin's fault, right?  
17 A. Yes, sir.  
18 Q. Because it was his job to make sure they met with  
19 your approval?  
20 A. Yes, sir.  
21 Q. Did you ever advise Mr. Ervin that he needed to  
22 improve the condition of the personnel records in Central  
23 Office?  
24 A. Yes, sir. And I think it's important here to  
25 know my approval of a future standard compared to a present

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 standard. I found the personnel records at the Department  
2 of Mental Health Central Office sufficient, sufficient to  
3 meet all of the regulatory requirements that I was aware of  
4 that they had to meet. My approval as far as a future  
5 standard was concerned would be related to process and  
6 products that could be in place to promote efficiency  
7 throughout the records retrieval process, throughout the  
8 archiving process, throughout the sharing of personnel  
9 records as we went through the hiring process.

10 I would have liked to have seen more  
11 electronic transmissions of certain documents to make sure  
12 that security was in place to protect health information  
13 and other pertinent information that we're required to  
14 protect. So when I say my approval, I am speaking to a  
15 future standard, not a standard of the Department to meet  
16 the personnel regulations that are set out by the State of  
17 Alabama.

18 Q. Have you ever heard of JCAHO?

19 A. Yes.

20 Q. What is that?

21 A. That's the Joint Commission for Hospital  
22 Accreditation.

23 Q. Are they the standard when it comes to  
24 accrediting hospitals?

25 A. You know, that's a divisive point that's been

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803/356-1990  
800/923-8899

240

1 argued in the hospital community for some time. So I am  
2 going to reserve comment on whether they are the standard.  
3 I don't know if there is a standard.

4 Q. But they are the premier licensing authority,  
5 right?

6 A. They are not a licensing authority.

7 Q. They are the premier standard bearer in the  
8 health care industry, are they not?

9 A. I don't know what standard bearer is. Joint  
10 Commission on Hospital Accreditation reviews hospitals and  
11 accredits those hospitals based on their standards that  
12 they set by an independent governing body. That may be  
13 appropriate for one hospital and inappropriate for another.  
14 As I said, this has been a discussion that has gone about  
15 for years in the hospital industry, so I am not going to  
16 sit here and tell you that JCAHO is the standard, because I  
17 don't know that to be the case.

18 Q. What are other standards would there be  
19 besides---

20 A. There's CARF. CARF is standard. It depends on  
21 what type of unit you are trying to get accredited and  
22 there's probably an accrediting agency for every type of  
23 discipline in the hospital. JCAHO is probably the most  
24 widely known and you probably go in more hospitals that are  
25 JCAHO accredited than CARF or others, but they're not the

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803/356-1990  
800/923-8899



1 only standard.

2 Q. Does either JCAHO or CARF, in conducting their  
3 review and setting their standards, do they consider the  
4 personnel offices in your health care facilities and how  
5 well your personnel offices conduct their business?

6 A. I don't know if they go to the Personnel Office,  
7 no, sir.

8 Q. Other than the criticism of the records that you  
9 have directed at Ms. Owens here, the state of the records,  
10 do you have any other criticism of Ms. Owens or her  
11 abilities?

12 A. I really don't have any criticism of Ms. Owens,  
13 period. I'm making a general reference to an observation  
14 that I made on a visit where I observed some records that  
15 were there. I don't have any criticism against Ms. Owens.

16 Q. Do you know how long Ms. Owens -- so is it your  
17 testimony Ms. Owens was responsible for those records?

18 A. No. That was your question to me that when you  
19 were giving her career path that she was in charge of  
20 Personnel at a hospital and I knew that she came to us or  
21 she was at least working for us in one of those facilities.

22 Q. I thought Ms. Owens closed facilities.

23 A. What do you mean closed facilities?

24 Q. I thought that is what she did. She would go in  
25 and help close those facilities.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

242

1 A. I don't know what she did. I can tell you this:  
2 if closing a facility and if some of the records that I saw  
3 was part of that closure, I would have some issues with it.

4 Q. Other than the issues you would have with  
5 records, are there any other things that you would or did  
6 have issues with Ms. Owens about?

7 A. I mean nothing personal or nothing that I have  
8 had a chance -- Mr. Ervin supervised these ladies, and I  
9 don't recall having any issues with them.

10 Q. I think Mr. Ervin, in their job evaluations, I  
11 think every one of them consistently exceeded standards in  
12 their job evaluations, isn't that true?

13 A. I don't know.

14 Q. Well, didn't you sign off on their job  
15 evaluations?

16 A. I would have reviewed their job evaluations, but  
17 I didn't evaluate them and as part of that review process I  
18 did not interject myself into the assessment of that  
19 evaluation. That was Mr. Ervin's responsibility. What I  
20 was signing off on as reviewer was to make sure those  
21 evaluations were done in accordance with the rules and  
22 regulations of the Department and that they were done in a  
23 timely stance.

24 Q. If Mr. Ervin was ever evaluating an employee more  
25 highly than you believed that employee should be evaluated,

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803/356-1990  
800/923-8899

1 would you ever interject yourself and tell him as his  
2 boss---

3 A. No. I think that's inappropriate and we have  
4 gone through that in many jurisdictions that I have worked  
5 in. Now I might share with him my comments, my personal  
6 observations, or what have you, about an individual, but  
7 the evaluation should be done by the person who directly  
8 supervises that individual, not the person that reviews the  
9 evaluation. And I think if you look you will find quite a  
10 lot of people who have consistently exceeds evaluations  
11 throughout, not only the Alabama Department of Mental  
12 Health, but the South Carolina Department of Mental Health  
13 and other mental health authorities. Evaluating personnel  
14 is a thing we wrestle with in this industry. It's  
15 something we try to get managers to understand how the  
16 evaluation tool is to be used, but unfortunately, we live  
17 in a market whereby keeping personnel oftentimes depends on  
18 keeping them happy by appeasing them with evaluations, so I  
19 have seen hundreds of evaluations of people with  
20 consistently exceeds, substantially exceeds, who, in my  
21 opinion, were improperly evaluated. But since I did not  
22 directly supervise those people, it would be irresponsible  
23 for me to interject what that evaluation ought to be.

24 Q. Let me ask you about the substitution clause that  
25 we discussed earlier. Did that substitution clause --

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803/356-1990  
800/923-8899

244

1 well, assuming it was there, in this case it wasn't there  
2 for this job. But if it had been there, would that clause  
3 have prevented degree people or people with degrees from  
4 applying for that job?

5 A. The substitution clause?

6 Q. Yes.

7 A. No. I don't think so.

8 Q. Would it have prevented people with degrees or a  
9 person with a degree from being given that job?

10 A. No, sir.

11 Q. Would it have discouraged people with degrees  
12 from applying for the job?

13 A. It may have.

14 Q. How?

15 A. Because you look at a position, if you see that  
16 there is going to be perhaps a large applicant pool of  
17 which you are going to have to go through a process, I have  
18 looked at jobs where I have seen things like that and said  
19 I am just not going to fool with it because by the time  
20 they get around to looking at the qualified people I am not  
21 going to waste all that time. If I am looking for a job  
22 and I expect to get a job in weeks or months, I want to  
23 make sure that my target effort towards looking for that  
24 job is as precise as it could be. So I have turned down  
25 jobs where I've seen substitution simply because I know

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 that as they cast that net they're going to be looking at  
2 people internal to the organization who may be at very low  
3 management ranks and may not be qualified to take on the  
4 leadership manner, but for whatever reason they've made a  
5 decision to issue that and they're going to take  
6 applications in based on that qualification standard, and  
7 I'm sure there are other people out there that make the  
8 same choice.

9 Q. Do you have any empirical evidence of the  
10 presence of a substitution clause discouraging people with  
11 degrees for applying for jobs?

12 A. No, sir. I have personal evidence of it.

13 Q. And that was you personally were discouraged?

14 A. Yes, sir. Well, not only that, other people that  
15 I have talked to.

16 Q. Who?

17 A. In the industry. People who come in and talk to  
18 me about jobs, who have called me up about a job and say  
19 things like, you know, I see you got this thing out here,  
20 are you guys really looking for someone or is this just  
21 something you put out to comply with the standard within  
22 the organization. I have seen people do that throughout my  
23 career in government.

24 Q. But even though it could discourage people you  
25 would still include it if the job was being advertised,

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

246

1 let's say, at a remote facility?

2 A. No. I would include it where I would have or  
3 were experiencing difficulty in recruiting and retaining  
4 qualified, top notch individuals to provide leadership for  
5 the organization. That doesn't necessarily mean remote.

6 Q. In your opinion, is Ms. Joan Owens not a  
7 qualified, top notch individual?

8 A. Top notch, no.

9 Q. In your opinion is June Lynn not a qualified, top  
10 notch---

11 A. June Lynn is a most qualified individual.

12 Q. I'm sorry. Not June Lynn. In your opinion is  
13 Lynn Hubbard not a qualified, top notch individual?

14 A. Not top notch, no.

15 Q. What is top notch?

16 A. Top notch would be just some of the things that  
17 we talked about. A person that meets the minimum  
18 qualifications for the job, who has exhibited a work  
19 history of leadership and effectiveness in the organization  
20 and experience in the area along with education.

21 Q. In your opinion, is Marilyn Benson top notch?

22 A. Top notch?

23 Q. Yes.

24 A. For which job?

25 Q. For the job she holds now.

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803/356-1990  
800/923-8899

1 A. I think she is a top candidate, yes.

2 Q. Why?

3 A. Well, I think if I recall what I've read that her  
4 education, her experience, and quite frankly, the way that  
5 she handles problems, at least my observations of it, lets  
6 me know that she's a top notch person in that area.

7 Q. How familiar are you with her experience?

8 A. I'm familiar with it as far as having read her  
9 evaluations and having observed her during my time there as  
10 Associate Commissioner.

11 Q. Now you said that Joan Owens is not top notch.  
12 Do you base that opinion on the personnel records we  
13 discussed?

14 A. No.

15 Q. Or is there any other reason?

16 A. No. I based my opinion as I did on Marilyn. On  
17 my observation and the duties as they were discharged while  
18 I was Associate Commissioner. And that does not mean that  
19 they were not good employees, that does not mean that they  
20 were dependable employees, but in my opinion if you ask me  
21 who would be a top notch, whatever that thing means, but to  
22 me it means cream of the crop, they would not have met that  
23 criteria.

24 Q. Does a person's race ever factor in whether  
25 they're top notch or not?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

248

1 A. No, sir. No, sir. Not at all. And I will be

2 offended by anyone that brought that subject up to me. I

3 have for more than 20 years fought for equality in the

4 workplace based on an ability to do the job, and I have

5 never once advocated that anyone should ever get a job

6 because of their race, because of their ethnicity, because

7 of their religion, their sex or any other factor other than

8 their ability to come into that organization, be a good fit

9 for the community that they are going to be working with

10 and organizing with and provide efficient leadership for

11 us. And I have turned down jobs if I ever suspected that

12 race was a component in me being selected for that position

13 because it's an insult to me personally.

14 Q. Can you have a qualified, top notch individual, a

15 qualified, top notch candidate for the position of

16 Departmental Assistant Personnel Manager who may not have a  
17 college degree?

18 A. I thought you asked that question.

19 Q. I'm not sure if I did.

20 MR. NIX: You did.

21 BY MR. MOZINGO:

22 Q. And your answer is?

23 MR. NIX: Three or four times.

24 A. My answer is the same as it was. Is it possible?

25 I imagine it is possible.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 Q. You testified earlier that you couldn't recall if  
2 you had specifically seen Plaintiffs' Exhibit 42 and 20 or  
3 Plaintiffs' Exhibit 19.  
4 A. Which ones are those?  
5 Q. Those are the three I have right there (handing  
6 exhibits to witness).  
7 A. Yes.  
8 Q. Did you ever see any written document -- since  
9 you don't remember seeing these, do you remember seeing any  
10 document that gave the definition, qualifications, and/or  
11 knowledge, skills and abilities for the position of  
12 Departmental Assistant Personnel Manager?  
13 A. No, sir.  
14 (Plaintiffs' Exhibit No. 34 was  
15 pre-marked for identification.)  
16 Q. Let me show you what's been marked Plaintiffs'  
17 Exhibit 34. That is a proposal to conduct a Wage and Class  
18 Study?  
19 A. Yes, sir.  
20 Q. Were you involved in that?  
21 A. Somewhat, yes.  
22 Q. How were you involved?  
23 A. I was involved in it by addressing with the  
24 Commissioner and Human Resource Director the need to  
25 conduct such a study because one had not been performed at

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803/356-1990  
800/923-8899

250

1 the Department for some time.  
2 Q. Did you recommend the study be conducted?  
3 A. Well, I was one of the people who recommended it.  
4 Mr. Ervin was also one of the people who recommended it.  
5 Q. Do you know who had the idea for conducting the  
6 study?  
7 A. No, sir.  
8 Q. Was it your idea?  
9 A. I don't recall.  
10 Q. Did you recommend to the Commissioner that the  
11 Wage and Classification Study be conducted?  
12 A. Yes, sir. I believe I did.  
13 Q. What is a Wage and Classification Study?  
14 A. It is a review of the Department's classification  
15 system, its payroll and compensation system and job  
16 descriptions.  
17 Q. What's the purpose of conducting a study?  
18 A. To make sure that your positions are in line with  
19 your competitors.  
20 Q. So I guess then what you have to do is take your  
21 existing structure, they come in, study it, evaluate it and  
22 tell you whether you are in line with competitors?  
23 A. They tell you where you are and make  
24 recommendations on how you can improve the organization.  
25 Q. So am I right then that the purpose of a Wage and

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803/356-1990  
800/923-8899

1 Class Study is to examine the existing structure that you  
2 have and then get an evaluation or -- let me ask it this  
3 way. I'm sorry. Strike that.  
4 You want a third party to evaluate your  
5 existing structure and give you recommendations on whether  
6 it needs to be improved, and, if so, how it should be  
7 improved? Is that a good summary?  
8 A. Well, no. I mean I didn't necessarily need a  
9 third party. This is something that in a lot of  
10 organizations could be done internally. We didn't have the  
11 resource capacity to do it. It was mainly addressed at our  
12 classification and compensation system again so that we  
13 could standard or modernize that compensation system across  
14 the board so that we can be competitive with our mental  
15 health system, so that we can be competitive with the other  
16 hospitals in the area, other mental health authorities, and  
17 that our people were properly classified as to the jobs  
18 that they were doing.  
19 Q. You said that it could be done internally but the  
20 Department did not have the resources to do it?  
21 A. Yes.  
22 Q. What do you mean by that?  
23 A. We didn't have the personnel available to do  
24 that. We went to an outside agency to do that. I think  
25 the first party that we addressed to do it was the State

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803/356-1990  
800/923-8899

252

1 Personnel Office.  
2 Q. When you say you didn't have the personnel, do  
3 you mean you didn't have enough personnel or didn't have  
4 personnel who were capable of doing it?  
5 A. Both.  
6 Q. This proposal wasn't made until June 16, 2006, is  
7 that correct?  
8 A. I don't know.  
9 Q. Well, if you look on the front page?  
10 A. That's on the front page, yes.  
11 Q. And if you look at the letter on the next page  
12 it's a letter to Ms. Catheryn Townsend, Director of  
13 Contracts Office?  
14 A. Yes.  
15 Q. Submitting the proposal and that letter is dated  
16 June 16, 2006?  
17 A. Yes.  
18 Q. So the Wage and Class Study itself was not  
19 conducted until sometime after June 2006?  
20 A. Well, I suppose, yes, sir. I wasn't there when  
21 it was done.  
22 Q. Do you know the results of that study?  
23 A. No, sir.  
24 Q. Was the study or results of that study a foregone  
25 conclusion for the Department in June 2006, in other words,

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803/356-1990  
800/923-8899

1 did the Department know in June 2006 what the  
2 recommendations would be from that study?  
3 A. No. This sounds like this is a response to the  
4 proposal. Generally what happens is an RFP goes out, you  
5 receive proposals, you go through an evaluation period, so  
6 if you're telling me that this proposal to conduct the  
7 study was done in June, I don't see how we would know the  
8 results prior to the proposal being submitted.  
9 Q. Let me go back and make sure I understand. You  
10 had left the Department when the Wage and Classification  
11 Study was done?  
12 A. I don't know if it's been done. While I was  
13 there it was not done and that was something that we fought  
14 to get done.  
15 Q. So you don't know what the results are in that  
16 Wage and Class Study?  
17 A. No. I don't.  
18 Q. If it was done, you don't know the results?  
19 A. I don't know.  
20 Q. But you were there when the proposal came in?  
21 A. Yes, sir.  
22 Q. Were you there when the proposal was accepted?  
23 A. I don't know when it was accepted. I imagine I  
24 was. I don't know.  
25 Q. I will represent to you that the Segal Group that

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803/356-1990  
800/923-8899

254

1 you see on the bottom of this exhibit actually did do, or  
2 it's my understanding they did a Wage and Class Study.  
3 We'll probably have someone testify to that fact later, but  
4 my understanding is they did one. So when this proposal  
5 was submitted back in June 2006, did you, Otha Dillihay,  
6 know what the results of what that Wage and Class Study  
7 would be?  
8 A. No, sir.  
9 (Plaintiffs' Exhibit No. 21 was  
10 pre-marked for identification.)  
11 Q. It's not a test. Just asking. Let me show you  
12 what's been marked Plaintiffs' Exhibit 21. This is  
13 minutes from a Job Evaluation Committee meeting, and that  
14 first paragraph there is a discussion about the  
15 substitution of experience requests submitted by Bryce  
16 Hospital on Mr. Bob White. Do you know Bob White?  
17 A. I am not certain, sir. I don't know.  
18 Q. According to these minutes you were present at  
19 this meeting. Do you remember the meeting, by the way?  
20 A. No, sir. Not offhand.  
21 Q. You can only rely on these minutes to tell you  
22 what happened, is that correct?  
23 A. That's correct.  
24 Q. So as we sit here today you don't know who Bob  
25 White is?

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803/356-1990  
800/923-8899

1 A. No, sir.  
2 Q. Do you know anything about Bob White?  
3 A. Not that I can recall, no, sir.  
4 Q. It appears to be the third sentence, Mr.  
5 Dillihay. The minutes say "Dillihay expressed concerns  
6 about compromising the Department's classification system  
7 for the sake of compensating one individual." Do you know  
8 what these minutes are talking about?  
9 A. No, sir.  
10 Q. Do you recall expressing such concerns?  
11 A. No, sir.  
12 Q. So if you don't recall it, you don't even know if  
13 you actually expressed such concerns other than the  
14 minutes, right?  
15 A. Well, the minutes are here, and I don't know if I  
16 made changes to a subsequent minute or what have you. We  
17 go to the meetings and the minutes will come out sometimes  
18 afterwards.  
19 Q. When it says for the sake of compensating one  
20 individual, do you know what those minutes are talking  
21 about?  
22 A. No, sir.  
23 Q. So as you sit here today, having no recollection  
24 of that meeting, you don't know what that sentence means?  
25 A. No, sir.

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803/356-1990  
800/923-8899

256

1 Q. Reading that sentence doesn't jog your memory?  
2 A. No, sir.  
3 (Plaintiffs' Exhibit No. 22 was  
4 pre-marked for identification.)  
5 Q. Let me have you look at what's been marked  
6 Plaintiffs' Exhibit 22. On the first page there, it says  
7 in the fourth full paragraph, it says "there was discussion  
8 regarding the substitution of a required degree and  
9 lowering the qualification requirements." By the way,  
10 these are minutes for the Job Evaluation Committee meeting  
11 February 24, 2005, and according to the minutes you were  
12 present. Do you remember that meeting?  
13 A. No, sir.  
14 Q. It says "Dillihay expressed concern about the  
15 year for year substitution and the possibility of  
16 devaluating the 'earned degree.'" Do you know what that  
17 means?  
18 A. No, sir. But I can tell you what I think it  
19 means.  
20 Q. What do you think it means?  
21 A. That we are giving one year substitution for one  
22 year of college, that I felt that that might not be a good  
23 thing for the Department.  
24 Q. Why?  
25 A. Why?

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803/356-1990  
800/923-8899

1 Q. Yes.  
2 A. Because I value education.  
3 Q. A subjective value that you have, that you value  
4 education?  
5 A. I think most of us value education, including  
6 yourself.  
7 Q. Well, whether I do or not, it still would be  
8 subjective to me, correct?  
9 A. Perhaps. Our country says differently. Our  
10 reimbursement for college-educated, college-trained people  
11 tells us different. The amount of people who are able to  
12 ascend the hierarchy in organizations throughout this  
13 country tell me different, so you can say it's subjective,  
14 but I'm sure that you could go somewhere and find something  
15 to support that statement there is value in the education  
16 process.  
17 Q. I think you could find plenty of argument, too,  
18 that our country doesn't value education enough, right? So  
19 you could find both. Flip over to the next page. It says  
20 another item of discussion was the substitution---  
21 A. Where are you reading?  
22 Q. I'm sorry. I'm reading the third full paragraph  
23 down. It's the very middle of the page. It begins with  
24 "another item." Do you see it?  
25 A. Yes, sir.

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803/356-1990  
800/923-8899

258

1 Q. It says: "Another item of discussion was the  
2 substitution of experience for the degree on Jim Elliott at  
3 Bryce Hospital Personnel. It says: "While Mr. Elliott did  
4 not have a related degree, it was clearly noted that he had  
5 sufficient experience to substitute. The second candidate,  
6 Ms. Debra Marks, who is African American, had not only a  
7 bachelor's but a master's degree in a directly related  
8 field. Dillihay brought to the attention of the Committee  
9 that it must be mindful of the litigious society in which  
10 we live." Do you know what that means?  
11 A. Do I know what that means?  
12 Q. Yes.  
13 A. Litigious society?  
14 Q. No, no. That sentence. Do you know what that  
15 sentence is talking about?  
16 A. I would imagine it is in the evaluation of hiring  
17 someone with lesser credentials over a person who had  
18 greater credentials, and that is a idea or a concern that  
19 we should keep in mind. Isn't that what this is about?  
20 Q. I'm asking you.  
21 A. Well, I am asking you guys.  
22 Q. I don't answer.  
23 A. It sounds like it.  
24 Q. I take the deposition.  
25 A. Okay.

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803/356-1990  
800/923-8899

1 Q. If you get your law degree you get to take  
2 depositions too.  
3 A. I don't want a law degree, Mr. Mozingo.  
4 Q. Well, you very well may not.  
5 MR. NIX: I think he does pretty darned well  
6 without one.  
7 BY MR. MOZINGO:  
8 Q. But my question is do you know what that sentence  
9 is talking about?  
10 A. Not specifically, no, sir.  
11 Q. Do you remember then that discussion?  
12 A. No, sir. I don't.  
13 Q. It says: The objective in filling any position  
14 should be to hire the "most qualified candidate," not  
15 necessarily the "best candidate."  
16 A. Right.  
17 Q. Do you know what that sentence means?  
18 A. No, sir.  
19 Q. Is that sentence ambiguous to you?  
20 A. It seems like it could be interpreted that way,  
21 yes.  
22 Q. Do you know then what is meant by the most  
23 qualified candidate as compared to the best candidate?  
24 A. No, sir. And I don't know if this is something I  
25 would attribute to myself. Again, these were the minutes

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

260

1 that were done on the 24th. We reviewed them. I don't  
2 know if I made subsequent changes to them. I can tell you  
3 that it does seem to be a confusing question. And I don't  
4 know what was at that particular time meant by qualified or  
5 best. And if I do recall, I do recall the name Jim Elliott  
6 at Bryce Hospital, that whatever position he was in, that  
7 he is still in that facility.  
8 Q. So as we sit here today you cannot explain to me,  
9 I am not saying you have to, I am just saying you cannot  
10 explain to me what is meant in that last sentence, the  
11 objective in filling any position?  
12 A. No, sir.  
13 Q. Because I don't know a difference between "most  
14 qualified" and "best qualified." Is there a difference?  
15 A. Is that what it says?  
16 Q. It does say that.  
17 A. It says "best candidate." It says "most  
18 qualified" and "best candidate," and I don't know what the  
19 subject of the discussion was or what reference was made to  
20 "best candidate." You know, if someone came in to me and  
21 said that a Joe Blow is the best candidate, and I looked  
22 and I see that Joe Blow is not a qualified candidate, that  
23 is not necessarily saying the same thing, so I don't know  
24 if I'm using someone else's interpretation to make a  
25 statement or if we were speaking about something

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899



1 specifically.

2 Q. Let's read on down then. Maybe the next  
3 paragraph sheds light on it. It says "there was discussion  
4 regarding Ms. Marks' experience." And I am going to skip  
5 the second sentence. (Reading.) "Even though Ms. Marks  
6 had come up the ranks in the Department, her experience in  
7 the area of personnel has not been to the overall scope and  
8 complexity from a managerial standpoint as compared to  
9 Mr. Elliott, nor has it been department wide." Do you  
10 remember that discussion?

11 A. No, sir.

12 Q. It says a motion was made to approve the request  
13 for substitution, it was seconded and approved, correct?

14 A. That is what it says.

15 Q. So we can take from these minutes, can we not,  
16 that Mr. Jim Elliott was awarded his position over another  
17 candidate based upon his experience alone, is that correct?

18 A. No, sir. I don't know if that was the case at  
19 all.

20 Q. I am saying from these minutes.

21 A. From these minutes, and what it says to me and I  
22 don't know who Ms. Marks is, what it says to me is exactly  
23 what it says, that a motion was made to approve the request  
24 for substitution.

25 Q. It also says that he did not have a related

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803/356-1990  
800/923-8899

262

1 degree but he had sufficient experience to substitute?

2 A. That is what it says.

3 Q. It says that and so it further notes that the  
4 competing candidate had come up through the ranks, had a  
5 degree, but did not have the overall scope and complexity  
6 of experience---

7 A. Okay.

8 Q. ---that Mr. Elliott had, correct?

9 A. That is what it says.

10 Q. So we can take from these minutes that  
11 Mr. Elliott was the best candidate because of his  
12 experience, correct?

13 A. No, sir. You can take from that that Mr. Elliott  
14 was recommended by the Committee to fill that position, for  
15 whatever thoughts of the other members, the Committee made  
16 their decision. I don't recall seeing a vote or even  
17 voting on it or how that played out, because that is all I  
18 can tell you from that. Again, without knowing who Debra  
19 Marks is or where she works or what her experience factor  
20 was, I don't think I could respond adequately to that  
21 question.

22 Q. I guess we can take from it that at least the  
23 Committee felt like Mr.---

24 A. You can take that they approved it.

25 Q. ---Elliott's experience alone was sufficient to

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803/356-1990  
800/923-8899

1 make him the best candidate?

2 A. Yes. For that job.

3 MR. NIX: Let me object to the form of that. I  
4 think that that is really a misstatement of what the  
5 minutes say.

6 MR. MOZINGO: I am saying we can take from it.  
7 He can agree or disagree, and I think he disagreed. So.

8 MR. NIX: Well, what I think I am saying is that  
9 the minutes say he did not have a related degree which to  
10 me does not mean that he did not have a degree necessarily  
11 and that perhaps experience alone was not the only factor.

12 (Plaintiffs' Exhibit No. 23 was  
13 pre-marked for identification.)

14 BY MR. MOZINGO:

15 Q. Let me show you what's been marked Plaintiffs'  
16 Exhibit 23, and this just seems to confirm, does it not,  
17 that Jim Elliott was allowed to or given the job of  
18 Personnel Manager III in a class 82 at Bryce Hospital based  
19 upon substitution of experience for degree. Is that what  
20 the document says?

21 A. No, sir. That is not what it says.

22 Q. What does it say?

23 A. It says Jim Elliott, Sandranetta Hanks and Teresa  
24 Harris and a new employee, Letitia Hendricks.

25 Q. I didn't ask everything it said.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

264

1 A. I'm just telling you what it says.

2 Q. I'm referring to Jim Elliott. I'm sure, like me,  
3 you would like to get out of here at some point. Generally  
4 we can take from the document, can we not, Mr. Dillihay,  
5 that Jim Elliott was allowed to accept a higher level job  
6 in a class 82 as Personnel Manager III using substitution  
7 of experience for a degree, correct?

8 A. That is what it says.

9 Q. Are you familiar with the qualifications for  
10 Personnel Manager III?

11 A. No, sir.

12 (Plaintiffs' Exhibit No. 24 was  
13 pre-marked for identification.)

14 Q. I have marked them as Plaintiffs' Exhibit 24.

15 MR. NIX: While you do that, let's take a little  
16 restroom break and give him time to do that.

17 BY MR. MOZINGO:

18 Q. Let me make this one statement before we break.  
19 And I have marked them there simply for consistency since  
20 we are talking about that position. I want the record, to  
21 have the benefit of the record that the qualifications for  
22 that position are in the record and you have had a chance  
23 to look at them.

24 MR. NIX: I'm sorry. What were you saying now?

25 MR. MOZINGO: That since we're talking about Jim

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803/356-1990  
800/923-8899

1 Elliott and what he did I just want for the record those  
2 qualifications to be in there.  
3 MR. NIX: Is that 24, is that what you just put  
4 in here?  
5 MR. MOZINGO: What I just gave him. He was  
6 promoted to Personnel Manager III, and I have attached the  
7 qualifications for Personnel Manager III, and we can come  
8 back when you finish your break.  
9 (Break from 4:20 to 4:30 p.m.)  
10 (Back on the record.)  
11 BY MR. MOZINGO:  
12 Q. Mr. Dillihay, we were talking a minute ago about  
13 the records that Joan Owens was involved with that didn't  
14 meet your standards, the facility---  
15 A. I don't recall.  
16 Q. ---where you were referring to?  
17 A. I don't recall.  
18 Q. Do you know where the facility was?  
19 A. No, sir. I don't.  
20 Q. Was it near Montgomery?  
21 A. It was in Alabama. That is all I know.  
22 Q. It might be a serious matter if it wasn't in  
23 Alabama.  
24 A. It might be, yes.  
25 Q. You don't know the facility specifics?

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803/356-1990  
800/923-8899

266

1 A. I don't know the specifics of that, no, sir.  
2 Q. Do you know when that was?  
3 A. No, sir.  
4 Q. You saw those records?  
5 A. No, sir. It was on one of my tours of one of the  
6 closed facilities and where those records were stored.  
7 Q. Why were you touring the closed facility?  
8 A. I don't recall. It may have been any number of  
9 reasons.  
10 Q. Who were you touring with?  
11 A. I don't recall.  
12 Q. While serving with the Department of Mental  
13 Health in Alabama, did you see any other organizations  
14 within the Department that had a flat structure?  
15 A. I'm sure I did. I don't recall any specifically.  
16 None that reported directly to me.  
17 Q. Can you recall if Finance and Accounting had a  
18 flat structure?  
19 A. I don't believe they did.  
20 Q. Can you recall how many people worked in there?  
21 A. No, sir.  
22 Q. Can you recall the title of the head of that  
23 department?  
24 A. I think it was Chief Financial Officer.  
25 Q. Did that person have an Assistant Chief?

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803/356-1990  
800/923-8899

1 A. I am not certain. I don't recall. But I believe  
2 they did.  
3 Q. But you're not certain?  
4 A. No, sir. I'm not certain.  
5 Q. We talked about the department that would have  
6 handled contracts?  
7 A. Yes.  
8 Q. Can you recall who would have been in charge of  
9 that department?  
10 A. Cathy Townsend.  
11 Q. How many people were in Cathy's office?  
12 A. I don't recall.  
13 Q. What was Cathy's title?  
14 A. I don't know.  
15 Q. Can you recall if there was an Assistant  
16 Department Head in that department?  
17 A. No, there was not.  
18 Q. There was not one?  
19 A. No, sir.  
20 Q. How about the department that handled  
21 construction, who was in charge of that?  
22 A. That was not a department that handled  
23 construction. Construction is a misnomer. It was related  
24 to our construction and maintenance of facilities, but no,  
25 sir, that was basically a one-person operation.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

268

1 Q. I guess that operation was truly flat then if it  
2 was a one-person operation?  
3 A. Well, as I said, I think that department was  
4 deficient. It would depend on the structure of the  
5 organization.  
6 Q. Was the Personnel Office inefficient?  
7 A. Inefficient?  
8 Q. Yes.  
9 A. In some ways.  
10 Q. In what ways was it inefficient?  
11 A. I believe it was inefficient as to the processing  
12 and handling of certain types of materials that came  
13 through. I don't think that they were substandard. I  
14 certainly feel they could be made more efficient.  
15 Q. Was the Department's performance substandard?  
16 A. No, sir.  
17 Q. It had room for improvement though?  
18 A. Yes.  
19 Q. But it was not substandard?  
20 A. No, sir.  
21 Q. Which I take to mean that it did meet standards?  
22 A. Yes.  
23 Q. Did any of the other departments have room for  
24 improvement?  
25 A. Yes.

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803/356-1990  
800/923-8899

1 Q. Were there any new jobs created or new positions  
2 created in any other departments there in the  
3 Commissioner's Office other than Human Resources?  
4 A. I don't recall.  
5 Q. What did you mean by there was a need to create a  
6 career development path in the Human Resources Department?  
7 A. I believe I answered that. So someone could come  
8 in at the bottom of the organization, ascend to the top  
9 ranks of the organization without having to leave and come  
10 back.  
11 Q. Could a person do that without possessing a  
12 college degree?  
13 A. Could they do it without possessing a college  
14 degree?  
15 Q. Right. Come in at the bottom and work their way  
16 up to the top?  
17 A. I don't know.  
18 Q. Is it possible?  
19 A. I imagine anything is possible.  
20 Q. Is it practical?  
21 A. Is it practical?  
22 Q. Yes.  
23 A. To what? To have a career development path?  
24 Q. Yes. Come in at the bottom---  
25 A. I think it's practical.

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803/356-1990  
800/923-8899

270

1 Q. ---and work your way to the top without having a  
2 college degree?  
3 A. Is that practical?  
4 Q. Yes.  
5 A. I don't know. That would depend on the  
6 organization and circumstance.  
7 Q. Is it reasonable?  
8 A. Is it reasonable?  
9 Q. A reasonable expectation?  
10 A. That would depend on the organization and  
11 circumstance.  
12 Q. Let's talk about the Central Personnel Office  
13 where you worked. Was it reasonable that a person could  
14 come in there and through experience and working in that  
15 department be able to start at the bottom and work their  
16 way up to the top without having a college degree?  
17 A. I don't know of anyone who did that.  
18 Q. Well, I guess you could have a college degree but  
19 not have it in Business Administration or Human Resources,  
20 couldn't you?  
21 A. Yes, sir. That's why we always ask for certain  
22 fields or related fields.  
23 Q. Would history be a related field?  
24 A. In what?  
25 Q. Human Resources.

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803/356-1990  
800/923-8899

1 A. I wouldn't necessarily consider that to be a  
2 related field.  
3 Q. So you would want to use substitution then if you  
4 had a history degree?  
5 A. I don't follow your question.  
6 Q. Well, if you wanted to work your way up to the  
7 top in Human Resources---  
8 A. Where?  
9 Q. At the Central Office.  
10 A. In Alabama?  
11 Q. Yes. In Alabama. If you wanted to work your way  
12 up to the top and all you had was a history degree, then  
13 you would want to be able to use substitution, wouldn't  
14 you?  
15 A. Yes.  
16 Q. Because you certainly don't have a related  
17 degree, do you?  
18 A. No. You don't have a related degree in my  
19 opinion, but if it's history of medical research, or if  
20 it's history of hospitalization, American history, it  
21 depends on what history you're talking about.  
22 Q. Can you get a degree in history of medical  
23 research?  
24 A. You can get a degree in just about everything  
25 nowadays. So for me to sit here and tell you that you can

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803/356-1990  
800/923-8899

272

1 get a degree in the history of health care or medical  
2 science, you know, I imagine that's possible.  
3 Q. Do you think so?  
4 A. I believe it is, yes.  
5 Q. They are offering degrees in history---  
6 A. No, sir. I said it is possible that somewhere  
7 someone could be offering a degree in history of medical  
8 science or research. That is possible.  
9 Q. Do you know of any?  
10 A. No, sir.  
11 Q. I don't know of any. And you don't know of any?  
12 A. No, sir.  
13 Q. Does that kind of follow along your same logic  
14 that anything is possible?  
15 A. I thought that was what I was trying to state.  
16 Just about anything is possible.  
17 Q. I agree. Let me show you Personnel Manager III  
18 that I gave you to look at. Do you still have that in  
19 front of you?  
20 A. Yes.  
21 Q. What exhibit number is that?  
22 A. Twenty-four (24).  
23 Q. Do you see up at the top it says range 82?  
24 A. Yes.  
25 Q. What does that mean?

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803/356-1990  
800/923-8899

1 A. That is the range that's been associated with  
2 that position for compensation and classification.

3 Q. Positions in the same classification, do they  
4 receive the same compensation? How does that work?

5 A. Every position has a position number, a  
6 classification number and a compensation associated with  
7 it. So without looking at the documents I can't tell you  
8 what each one is like.

9 Q. Why does the classification system work, could  
10 you educate me on that, what that means?

11 A. What does the classification system do?

12 Q. Yes, sir.

13 A. You have a requisite job that is to perform  
14 certain duties. That position is classified, is given a  
15 range and compensation level.

16 Q. Do you classify jobs based upon the nature of the  
17 duties that they perform? In other words, jobs that where  
18 you perform similar duties to other jobs would all be in  
19 one classification?

20 A. Generally that is a good rule of thumb.

21 Q. That may not have been a very artful way of  
22 describing it, but is that a good way to describe it?

23 A. That's as good as any.

24 Q. Because I don't work in Human Resources, so if  
25 you can give me a more artful description, please feel free

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

274

1 to. Does the classification system, there are compensation  
2 ranges in the classification system, correct?

3 A. Yes.

4 Q. Does the compensation correlate to the  
5 difficulty, complexity or demands of a job?

6 A. I don't know if you say that as the correlation.  
7 Compensation relates to the classification of the job. So  
8 the job is classified based on what it does and then  
9 compensation is established for it.

10 Q. But in establishing compensation there has to be  
11 some correlation to what the job does, correct?

12 A. Yes, sir.

13 Q. Like you wouldn't pay a secretary more than you  
14 might pay the in-house lawyer, right? There is a  
15 correlation between the---

16 A. Yes.

17 Q. --the nature of the work that they do, the  
18 complexity of the work that they do?

19 A. Yes.

20 Q. And the skills that have to be employed, correct?

21 A. Yes.

22 MR. NIX: We pay ours more than the lawyers.

23 A. I have seen secretaries paid more than lawyers on  
24 a regular basis, particularly in Washington.

25 Q. Because they are more competent than lawyers, I

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803/356-1990  
800/923-8899

1 think.

2 A. I don't know how competent they are, but I can  
3 tell you there are a number of lawyers that made less than  
4 a lot of secretaries and executive assistants.

5 Q. I wouldn't disagree with that. I am sure we  
6 could all find examples of that. But generally there is a  
7 correlation then in compensation with the complexity, the  
8 demands, the nature of the work performed, correct?

9 A. Yes, sir.

10 Q. There is also a correlation between the  
11 qualifications for a job and the nature of that job, i.e.  
12 the complexity, the skills required, the demands, correct?

13 A. Yes.

14 (Plaintiffs' Exhibit No. 25 was  
15 pre-marked for identification.)

16 Q. Let me have you look at Plaintiffs' Exhibit 25.  
17 I am going to give you the marked copy there. Plaintiffs'  
18 25, Mr. Dillihay, those are the minutes of the June 10,  
19 2005, Job Evaluation Committee, correct?

20 A. Yes.

21 Q. It says, and I am not going to read the entire  
22 paragraph, but it says "a poll of the JEC members were  
23 taken to consider a substitution of experience on a  
24 Ms. Susan Szczepanski. Do you know how to pronounce that?

25 A. No, sir.

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803/356-1990  
800/923-8899

276

1 Q. One more sentence over it says the issue was not  
2 with the degree requirement because Ms. Szczepanski  
3 possesses the degree, however, her work experience was in  
4 question since the majority of it was doing staff  
5 development work in private industry," correct?

6 A. That is what it says.

7 Q. Do you recall that meeting?

8 A. No, sir.

9 Q. But it sounds like that the use of a degree or  
10 the use of substitution or the requirement of a degree can  
11 be a catch-22, right? It sounds like you can have a degree  
12 but not have the experience as far as qualifying for a job.

13 A. Sure. Certainly.

14 Q. Likewise, you can have the experience but not  
15 have the degree?

16 A. Yes.

17 Q. Correct?

18 A. That's correct.

19 Q. So there is no rule of thumb that a person with a  
20 degree is always the most or best qualified for a position,  
21 correct?

22 A. That's correct.

23 (Plaintiffs' Exhibit No. 26 was  
24 pre-marked for identification.)

25 Q. Let's look over at Plaintiffs' Exhibit 26, or let

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803/356-1990  
800/923-8899

1 me hand you Plaintiffs' Exhibit 26. That (indicating), by  
 2 the way, is just the job qualifications that are being  
 3 referenced in the minutes of the June 10, 2005, Job  
 4 Evaluation Committee meeting.  
 5 A. Okay.  
 6 Q. I just wanted to include that in the record.  
 7 That way if we are having to read your deposition into the  
 8 record we will have those qualifications to refer to.  
 9 A. Okay.  
 10 (Plaintiffs' Exhibit No. 27 was  
 11 pre-marked for identification.)  
 12 Q. Let me show you what's been marked Plaintiffs'  
 13 Exhibit 27. These are the minutes of the Job Evaluation  
 14 Committee meeting held on July 22, 2005, correct?  
 15 A. Yes.  
 16 Q. This says that you were absent, do you see that?  
 17 A. Yes.  
 18 Q. Do you know why you were absent?  
 19 A. No, sir.  
 20 Q. I guess since you were absent you would have no  
 21 knowledge of what went on during that Job Evaluation  
 22 Committee meeting, would you?  
 23 A. No, sir.  
 24 (Plaintiffs' Exhibit No. 28 was  
 25 pre-marked for identification.)

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 803/356-1990  
 800/923-8899

278

1 Q. Let me show you what's been marked Plaintiffs'  
 2 Exhibit 28. According to the minutes you were present for  
 3 the Job Evaluation Committee meeting on January 12, 2006,  
 4 do you see that?  
 5 A. Yes.  
 6 Q. Do you see where it says the Second Item:  
 7 Substitution of Experience for Administrator V?  
 8 A. Yes.  
 9 Q. It concerns a Kristopher Vilamaa. Do you know  
 10 how to pronounce that name?  
 11 A. No, sir.  
 12 Q. According to the notes you were on the interview  
 13 panel for that individual. That is why I was wondering if  
 14 you might be able to pronounce his name, but the committee  
 15 meeting notes say that "Kent Hunt gave a brief overview of  
 16 the request and the need to fill this critical position,"  
 17 i.e. substitution of experience for Administrator V  
 18 concerning Kristopher Vilamaa. It says "Otha Dillihay  
 19 further noted that he was on the interview panel and  
 20 thought Mr. Vilamaa was quite suited for this position."  
 21 Do you see that?  
 22 A. Yes, sir.  
 23 Q. Do you remember that meeting?  
 24 A. No, sir.  
 25 Q. Do you remember stating that Mr. Vilamaa was

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 803/356-1990  
 800/923-8899

1 quite suited for the position of Administrator V?  
 2 A. No, sir. Not specifically.  
 3 Q. What I take from this committee, from the minutes  
 4 of this committee meeting is that Mr. Vilamaa did not have  
 5 the necessary degree for the position of Administrator V,  
 6 and therefore, was substituting experience, is that true?  
 7 A. I don't know. That is what it seems like.  
 8 Q. Is that what you take from it too?  
 9 A. That is what it says, yes.  
 10 Q. On that occasion, concerning Mr. Vilamaa, you  
 11 spoke in favor of substituting his experience for the  
 12 required degree, correct?  
 13 A. It appears to be so, sir.  
 14 (Plaintiffs' Exhibit No. 29 was  
 15 pre-marked for identification.)  
 16 Q. Let me show you what's been marked Plaintiffs'  
 17 Exhibit 29. Again, for the record, that is the job specs  
 18 for Administrator V that would have been applicable to  
 19 Mr. Vilamaa. According to these job specifications, and  
 20 let me stop there. Is it proper for me to refer to this as  
 21 a job spec or does it have its own name, do you know?  
 22 A. I don't know what it has, no, sir.  
 23 Q. I hate to use that term if it's not truly  
 24 applicable. I didn't know if there was a term of art that  
 25 you would use in describing this document, but according to

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 803/356-1990  
 800/923-8899

280

1 the job specs, this position of Administrator V is an  
 2 "advanced professional administrative work of extensive  
 3 scope and complexity in the mental health program for the  
 4 State of Alabama. Employees in this class are responsible  
 5 for directing and coordinating a large segment of the  
 6 State's mental health program for assisting in the  
 7 operation of a mental health facility." Is that correct?  
 8 A. That is what it says here.  
 9 Q. Is that a true description of what an  
 10 Administrator V does?  
 11 A. I don't know that to be certain. This is a  
 12 generic spec, so you would have Administrator V's doing all  
 13 kinds of jobs throughout the Department. It appears that  
 14 Mr. Kris, whatever his last name is, was specifically  
 15 working with processes related to information management  
 16 and I can tell you that my experience shows that when it  
 17 comes to information management there are many, many  
 18 qualified people who are out there that can get the job  
 19 done who have not had formal education. So there are also  
 20 Administrator V's that do purely administrative type work  
 21 of which there would not be difficulty in finding someone  
 22 who is college trained and experienced, so you have to take  
 23 the spec in proper perspective of the position that we are  
 24 talking about.  
 25 Q. Mr. Vilamaa, by the way, was he applying for the

COLUMBIA TRANSCRIPTS, INC.  
 803/356-1990  
 800/923-8899



1 Administrator V position in the Central Office?  
2 A. I am not sure what he was applying for.  
3 Q. It says, if you look back at the minutes of the  
4 January 12, 2006 meeting it says Central Office?  
5 A. Yes.  
6 Q. Would that be the Central Office in Montgomery?  
7 A. Central Office, Substance Abuse Division, that's  
8 located in Montgomery.  
9 Q. Is that located in the Commissioner's Office  
10 where you worked?  
11 A. Yes.  
12 Q. Is that located in the Commissioner's Office  
13 where Mr. Henry Ervin works?  
14 A. Yes.  
15 Q. And where Ms. Marilyn Benson works?  
16 A. Yes.  
17 MR. NIX: You're talking about the building,  
18 right?  
19 A. The building, not the office.  
20 Q. I mean the building.  
21 A. Yes.  
22 Q. Well, let's go back to the beginning. When I  
23 referred to the Commissioner's Office, I am referring to  
24 that office in Montgomery where you all worked?  
25 A. That was my understanding that we're talking

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

282

1 about the venue.  
2 (Plaintiffs' Exhibit No. 30 was  
3 pre-marked for identification.)  
4 Q. Let me show you what's been marked Plaintiffs'  
5 Exhibit 30. Those are the minutes for the June 26, 2006  
6 meeting. If you will look down, it says you were present,  
7 but there are some comments that are attributed to you in  
8 the very middle of the page. Do you see where it says  
9 Mr. Dillihay in bold?  
10 A. Yes.  
11 Q. Look at the second paragraph there under your  
12 name. It says, "When considering substitution of  
13 experience, the Committee should also establish  
14 parameters."  
15 A. Yes.  
16 Q. (Reading.) "Again, the Committee should rely on  
17 H.R." Would that be Human Resources?  
18 A. That's correct.  
19 Q. "To make the determination whether or not  
20 sufficient experience is there in which to substitute?"  
21 A. That is correct.  
22 Q. So were you saying then at this meeting that in  
23 determining if a person has enough experience to substitute  
24 for education, that the Job Evaluation Committee should  
25 defer to the determinations of the Human Resources

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 Department?  
2 A. That sounds like what I'm saying there, sir.  
3 Q. Would that be because the Human Resources  
4 Department is in the best position to make that  
5 determination?  
6 A. Yes, sir. I would think so.  
7 Q. I guess based upon the nature of their work  
8 and---  
9 A. Well, that, and I think there was some concerns  
10 about the overall operation of the JEC and what the JEC  
11 might be doing to overstep its bounds as it related to  
12 positions.  
13 Q. Would you flip to page three for me, sir? The  
14 5th item: Substitution of Experience for Rebecca Taylor  
15 from a Personnel Assistant II to a Personnel Specialist II.  
16 It says there was considerable discussion regarding the  
17 request. Do you remember that request, by the way?  
18 A. No, I don't.  
19 Q. So you wouldn't remember the discussion either,  
20 would you?  
21 A. No, sir. I don't.  
22 Q. It says: "It was further noted that there was no  
23 other qualified applicants for this position. However, the  
24 Committee did not feel the type of work experience for  
25 Ms. Taylor was sufficient for her to be classified as a

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

284

1 Personnel Specialist II." Is that what it says?  
2 A. Yes.  
3 Q. It says a vote was taken not to approve the  
4 request but that you, Mr. Dillihay, abstained.  
5 A. Yes.  
6 Q. Why did you abstain from that vote?  
7 A. I don't know.  
8 Q. At that time on June 26, 2006, did you have a  
9 firm stance or position on the use of substitution?  
10 A. Did I have a firm stance? I had formulated my  
11 opinion about it. I wouldn't say that I was closed off to  
12 other opinions, and I feel that I have articulated that,  
13 that where we had available pools that we felt that we  
14 could recruit from, that substitutions might not be  
15 necessary. Where there were difficult areas to recruit and  
16 retain personnel, substitution would be appropriate.  
17 (Plaintiffs' Exhibit No. 31 was  
18 pre-marked for identification.)  
19 Q. Again, I am going to show you Plaintiffs' 31, and  
20 again, that is just since we were talking about that  
21 position.  
22 A. Which one is this?  
23 Q. The one we were just reading from on page three  
24 concerning Rebecca Taylor. That is the Personnel  
25 Specialist II specs that I just wanted to include in the

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 record so we would know what those qualifications are. I  
2 am not going to ask you to comment on them.  
3 A. Okay.  
4 (Plaintiffs' Exhibit No. 32 was  
5 pre-marked for identification.)  
6 Q. Let me show you what's been marked Plaintiffs'  
7 32. These are the minutes from the July 18, 2006 meeting.  
8 On page two, they are not numbered but the second page  
9 there, the third paragraph from the bottom says "a  
10 committee has been devised to review the RFP's submitted  
11 for wage and class." What are they talking about there, do  
12 you know?  
13 A. Sounds like a selection -- I mean a review  
14 committee for the RFP for the Wage and Class Studies.  
15 Q. Would that be requests for proposals, is that  
16 what they're referring to?  
17 A. Yes.  
18 Q. So a committee has been devised to review the  
19 submissions in response to the RFP's?  
20 A. Yes, sir. That's what it appears to be.  
21 Q. "Mr. Ervin," and I am reading from not the next  
22 sentence but the one thereafter, "Mr. Ervin informed the  
23 group that our Personnel Managers would do the leg work in  
24 identifying job groups and also identifying which classes  
25 should allow substitution and which ones should not." Do

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

286

1 you know what they're talking about there?  
2 A. No, sir.  
3 Q. Do you see Personnel Managers, the P in Personnel  
4 and the M in Managers is capitalized?  
5 A. Yes.  
6 Q. Are they referring to a class of employees?  
7 A. I imagine they are talking about the Personnel  
8 Managers in the facilities.  
9 Q. The different facilities operated by Mental  
10 Health across the state of Alabama?  
11 A. That's correct.  
12 (Plaintiffs' Exhibit No. 33 was  
13 pre-marked for identification.)  
14 Q. Let me show you what I have marked as Plaintiffs'  
15 33. Mr. Dillihay, I will represent to you these are the  
16 last minutes that I have for you that you were involved in,  
17 because I think you left the Department sometime around  
18 February '07, is that correct?  
19 A. That's correct.  
20 Q. It says on the top of page two, "the Committee  
21 voted and approved to suspend any further job audits on  
22 exempt classifications until the completion of Wage and  
23 Class." What are they talking about there?  
24 A. It sounds like until the completion of the Wage  
25 and Class Study was done.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 Q. What is a job audit?  
2 A. It's a review of a person's job functions.  
3 Q. What is the purpose of a job audit?  
4 A. It may be multi-faceted. It may be in response  
5 to a request for an upgrade. It may be to find whether or  
6 not you are going to create a new position based on the  
7 audit of a required position.  
8 Q. Look over to the next page, page three, IX, it  
9 says "Job Specifications for the RN IV and RN V were given  
10 to committee members for their review." Do you see that?  
11 A. Yes.  
12 Q. So I take it from these minutes that job  
13 specifications were reviewed by the Job Evaluation  
14 Committee?  
15 A. Yes. That is what it says.  
16 Q. And these minutes are unambiguous, are they not,  
17 that job specifications were, in fact, given to the JEC for  
18 its review?  
19 A. Job specifications for the RN IV and RN V were  
20 given to the committee members.  
21 Q. That's correct. Right.  
22 A. Yes.  
23 Q. That is fairly unambiguous, isn't it?  
24 A. Yes.  
25 Q. Did you assist anyone with the Department of

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

288

1 Mental Health in preparing the Department's E.E.O.C.  
2 response?  
3 A. I don't recall assisting anyone, no, sir.  
4 Q. Let me have you flip to page seven of your  
5 response to the interrogatories and request for production  
6 documents. That is a document I would have given you early  
7 today, page 7. If you will look with me, the next to last  
8 paragraph, next to last sentence, it says "There was  
9 discussion," again this is your response, "There was  
10 discussions about progress needed in the Central Personnel  
11 Department."  
12 A. I'm sorry.  
13 Q. The third from the last sentence, not the next to  
14 last. I'm sorry. It says "Both Commissioners, Kathy  
15 Sawyer and John Houston, raised the need to improve the  
16 overall effectiveness of the Central Personnel---"  
17 MR. NIX: I still don't see it. We may have a  
18 different version than you've got.  
19 MR. MOZINGO: Page seven, Otha Dillihay. Is  
20 there a different version?  
21 MR. NIX: Well, you know, I printed one out for  
22 him before I came.  
23 BY MR. MOZINGO:  
24 Q. Page 7 of 20. It says "There was discussion,"  
25 again, the next to last paragraph, third sentence from the

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 bottom, or from the end, "There was discussion about  
2 progress needed in the Central Personnel Department. Both  
3 Commissioners, Kathy Sawyer and John Houston, raised the  
4 need to improve the overall effectiveness of the Central  
5 Personnel Department." Was Kathy Sawyer still with the  
6 Commission when John Houston became the Acting  
7 Commissioner?  
8 A. No.  
9 Q. Or did John Houston replace Kathy Sawyer?  
10 A. He replaced her on an interim and then was  
11 appointed permanent.  
12 Q. So when you say both Commissioners, Kathy Sawyer  
13 and John Houston, raised the need to improve the overall  
14 effectiveness, do you mean at different times?  
15 A. Yes.  
16 Q. Because they weren't both acting as Commissioners  
17 at the same time?  
18 A. No, sir. They were not.  
19 Q. And improve the overall effectiveness of the  
20 Central Personnel Department, is that what you have already  
21 testified to earlier?  
22 A. Yes.  
23 Q. And what I took from that was the ability of the  
24 Personnel Department to conduct the interview process  
25 quicker?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

290

1 A. Oh, no, sir. That shouldn't be what you take  
2 from that at all. To be as efficient as possible in all  
3 facets of Human Resource Management as it applied to the  
4 Department, not just the interview process.  
5 Q. What improvements were needed outside of  
6 improving the quickness of their being able to conduct the  
7 interview process?  
8 A. I don't know where we got on the quickness of the  
9 interview process. There are many, many facets, as I said,  
10 the Wage and Class Study making sure our jobs were properly  
11 classified and compensated, making sure that our processes  
12 for advertising and recruitment were in place. There were  
13 just many facets in the overall personnel process making  
14 sure that we are as efficient as possible and adhering to  
15 the rules and regulations associated with Human Resource  
16 Management, so it wasn't one particular thing. The  
17 interview process may have just been one of those  
18 components.  
19 Q. It was a variety of things?  
20 A. Yes.  
21 Q. Next paragraph, the last paragraph there, the  
22 second sentence: "In our many meetings, we at times,  
23 discussed the strategic planning element of the Personnel  
24 Department and the needs for the Department as well as the  
25 staff's ability to meet those needs."

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 A. Yes.  
2 Q. What are you talking about there?  
3 A. I guess we are, again, we're talking about  
4 overall efficiency of process.  
5 Q. Did you feel like the staff, the existing staff  
6 was unable to meet those efficiency needs?  
7 A. No. This was spoken in terms of strategic  
8 planning, again, looking forward and what would be required  
9 in order for us to meet our future needs.  
10 Q. Were you looking to bring folks from outside of  
11 the Central Personnel Office to help improve that  
12 efficiency?  
13 A. I can't say that I was looking for anything that  
14 was specific. I imagine that would be a combination of  
15 factors, both in-house training, outside assistance from  
16 consultants and other groups, so we are talking about  
17 strategic planning here which is a different process.  
18 Q. Is strategic planning the same as long-term  
19 planning?  
20 A. It could be. Long-term planning and strategic  
21 planning aren't necessarily the same things.  
22 Q. In these strategic planning discussions that are  
23 referred to in your answers to interrogatories, are you  
24 talking about long-term planning for Central Personnel?  
25 A. Long-term strategic planning, what do we need to

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

292

1 do to promote overall efficiency.  
2 Q. It says in the next sentence: "I do not remember  
3 specifically when the creation, establishment and filling  
4 of the Departmental Assistant Personnel Manager's position  
5 was discussed. . ." I am going to skip down. Part of the  
6 next sentence modifies this sentence I am skipping, but it  
7 says: "It is possible we discussed each person working in  
8 Personnel, including Ms. Owens and Ms. Hubbard in  
9 conjunction with the overall structure and efficiency of  
10 the Personnel Department."  
11 A. Yes.  
12 Q. What do you mean by that?  
13 A. What I mean is if we are doing strategic  
14 planning, you've got to take assessment of where you are  
15 now, what are the skills and capabilities of your existing  
16 work force and what will you need to get you to where you  
17 want to be down the road.  
18 Q. So in doing that strategic planning, was there a  
19 discussion concerning the skills and abilities of each  
20 person working in Central Office Personnel?  
21 A. I don't recall specifically a discussion about  
22 that.  
23 Q. According to this sentence you stated, "It's  
24 possible we discussed each person working in Personnel in  
25 conjunction with the overall structure and efficiency of

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 the Personnel Department."  
2 A. Uh-huh.  
3 Q. So apparently, according to your sentence here,  
4 there would have been a discussion of each person in that  
5 Department and how they contributed to the structure and  
6 efficiency of the Department, correct?  
7 A. Accordingly and apparently in the discussion of  
8 the paragraph. I don't remember the discussion  
9 specifically. I think that it is possible that we did  
10 discuss individual persons within that Department, but I  
11 don't remember the discussions specifically at all.  
12 Q. Do you recall what the discussions were regarding  
13 individual persons?  
14 A. No, sir.  
15 Q. Did the discussions have a nature of critiquing  
16 the individual persons in the Department?  
17 A. I don't recall anything like that. No, sir.  
18 Q. Did the discussions involve the strengths and  
19 weaknesses of the individual people in the Department?  
20 A. I don't recall.  
21 Q. Did the discussions involve how the individual  
22 people in the Department fit into the strategic planning  
23 for the Department?  
24 A. I don't recall that.  
25 Q. I guess then what you are saying with this

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

294

1 sentence is it's possible you discussed each person working  
2 in the Department in conjunction with the structure and  
3 efficiency discussions but you don't recall what they are  
4 today?  
5 A. No, sir.  
6 Q. Or what those discussions were?  
7 A. Or who was talked about.  
8 Q. How long did you continue to work with Mental  
9 Health after Ms. Benson was appointed Department Assistant  
10 Personnel Manager?  
11 A. I don't know.  
12 Q. When you left the Mental Health Department in  
13 January 2007, had the efficiencies or overall effectiveness  
14 of the Department improved?  
15 A. Of the Department?  
16 Q. Of the Central Personnel Office, had they  
17 improved?  
18 MR. NIX: From what point in time?  
19 BY MR. MOZINGO:  
20 Q. You have told me about doing strategic planning  
21 to improve the efficiencies---  
22 A. Right.  
23 Q. ---of Central Office Personnel. My question is  
24 had those efficiencies improved any when you left in 2007?  
25 MR. NIX: From what point in time?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 BY MR. MOZINGO:  
2 Q. From whatever point in time you thought there was  
3 a need for that Department to improve its efficiency.  
4 A. I don't know what happened to the Department  
5 after I left or what their efficiency is. When I left, I  
6 left.  
7 Q. Had the Central Personnel Office, at the time you  
8 left in 2007, improved their overall efficiency?  
9 A. From when?  
10 Q. From when you arrived?  
11 A. Yes, sir.  
12 Q. When did that improvement incur?  
13 A. I don't know when it occurred. It occurred over  
14 the course of my leadership there.  
15 Q. How were the efficiencies improved?  
16 A. How were they improved?  
17 Q. Yes. You said they improved it. What happened  
18 to result in that improvement?  
19 A. Well, I think what we did we got the staff on a  
20 course that we wanted them directed in and they actually  
21 achieved the goals and objectives that we set out for the  
22 Department.  
23 Q. When you say Department, do you mean Central  
24 Office Personnel?  
25 A. Central Office Personnel and administration in

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

296

1 general.  
2 Q. What specific goals of Central Office Personnel  
3 were achieved?  
4 A. I don't recall what those specific goals were.  
5 Q. Well, you testified that they achieved them.  
6 A. Yes.  
7 Q. But you cannot tell me what they achieved?  
8 A. Not specifically, no, sir.  
9 Q. If you will look over at page nine, please, of  
10 your answer to interrogatories. By the way, can Mr. Henry  
11 Ervin type?  
12 A. I don't know.  
13 Q. Look at the bottom of -- I am going to give some  
14 better directions here -- Interrogatory Number 11. Do you  
15 see the first paragraph of your response?  
16 A. Yes.  
17 Q. Not the Objection of Counsel but where it says  
18 Response?  
19 A. Yes, sir.  
20 Q. Look at about the last three or four sentences of  
21 that paragraph. You had been asked in that interrogatory  
22 about communications you had with any other defendants  
23 concerning the creation of Departmental Assistant Personnel  
24 Manager and you state "I believe I did receive the  
25 specification draft from Henry Ervin." Now it's your

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 testimony today that you do not recall receiving the  
2 specification exhibits that we have marked for that  
3 position, is that correct?

4 MR. NIX: He said, excuse me, let me object to  
5 the form of the question. His testimony was that he did  
6 not have a specific recollection of those particular  
7 documents, not that he did not receive or that he did not  
8 recall receiving specifications.

9 MR. MOZINGO: That is helpful. Obviously the  
10 record will speak for itself.

11 BY MR. MOZINGO:

12 Q. Can you tell me whether the exhibits that you  
13 have looked at today, the specification exhibits, are the  
14 draft that you are referring to Interrogatory Number 11?

15 A. I can't tell you that, no, sir.

16 Q. Do you know how many drafts there were?

17 A. No, sir.

18 Q. Is it possible there was more than one draft?

19 A. Is it possible? Possible, yes.

20 Q. It says "I would have made comments back to Henry  
21 Ervin." Did you suggest any changes to the draft?

22 A. I don't recall.

23 Q. Can you recall suggesting any changes to proposed  
24 specifications for the Departmental Assistant Personnel  
25 Manager?

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

298

1 A. I don't recall, no, sir.

2 Q. Look at the very top of page 10. This is part of  
3 your same response to Interrogatory Number 11. You had  
4 stated on the bottom of page nine that you weren't involved  
5 in the application review process, but you state at the top  
6 of page ten that you recommended with both Commissioner  
7 Houston and Ervin that the Interview Committee should  
8 contain an individual from outside the Department of Mental  
9 Health and Retardation to conduct the candidate review  
10 process, correct?

11 A. I recommended them to be on a team of people who  
12 would do that.

13 Q. Why did you make that recommendation?

14 A. Because I think that is healthy when we're  
15 talking about personnel to have someone outside of the  
16 organization who is competent and qualified to speak to  
17 personnel issues to participate in that type of selection.

18 Q. If you had known that Marilyn Benson was involved  
19 in the preparation of the specifications for the Assistant  
20 Department Personnel Manager, would you have recommended  
21 that those specifications be worked on by someone else  
22 besides Ms. Benson?

23 A. I don't know what I would have recommended. It  
24 depends on what the changes that you are talking about.

25 Q. In your opinion as a professional personnel

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

1 manager that you are, do you find it unethical that

2 Ms. Benson worked on the specifications for a job that  
3 she---

4 A. No.

5 Q. ---eventually applied for and received?

6 A. No.

7 MR. NIX: Objection to the form of the question.

8 BY MR. MOZINGO:

9 Q. Do you find it unprofessional that Ms. Benson  
10 worked on the specifications?

11 MR. NIX: Object to the form.

12 A. I don't know to what extent she worked on them,  
13 so I can't make a determination on whether or not I feel  
14 that it was unethical or professional. I had no knowledge  
15 that she worked on it.

16 Q. I understand that. But since you don't have that  
17 knowledge, is it possible that if you did have more  
18 knowledge you might conclude that her involvement was  
19 unprofessional?

20 A. I don't know.

21 MR. NIX: Let me object to the form of that for  
22 sure.

23 BY MR. MOZINGO:

24 Q. You don't know?

25 A. I don't know the answer to that, Mr. Mozingo.

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

300

1 Q. But your testimony is you don't know that she was  
2 involved?

3 A. I don't know that she was involved, no, sir.

4 Q. If she was involved in preparing the  
5 qualifications for that position, okay---

6 A. Uh-huh.

7 Q. ---would you conclude that her involvement was  
8 unprofessional?

9 MR. NIX: Object to the form.

10 A. Again, I don't know.

11 Q. Do you believe, again, assuming that she was  
12 involved in the preparation of the qualifications, do you  
13 believe that her involvement creates an appearance of  
14 impropriety?

15 MR. NIX: Object to the form.

16 BY MR. MOZINGO:

17 Q. And her being involved in drafting qualifications  
18 for a job that she applied for and received?

19 MR. NIX: Object to the form.

20 A. I don't know.

21 Q. You don't know?

22 A. I don't know to what extent she was involved, to  
23 what extent she participated in the qualification issues, I  
24 don't have any of that information and that would certainly  
25 depend on to what extent we are talking about. If we're

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899



1 talking about her typing something already prepared and  
2 approved by Mr. Ervin, I don't know that I necessarily see  
3 that as objectionable. If I see her doing something that's  
4 unethical or immoral or illegal, then perhaps I would.  
5 Q. What about her researching and gathering  
6 qualifications for that position?  
7 MR. NIX: Object to the form.  
8 A. What about it?  
9 Q. You said you didn't know the nature of her  
10 involvement, but if you were told. Assume we go back to  
11 2005, and someone came to you and said Ms. Benson is  
12 working on drafting the qualifications for a position for  
13 which she intends to apply, would you conclude that that  
14 involvement was improper?  
15 MR. NIX: Object to the form.  
16 A. I don't know.  
17 Q. Would you recommend that she cease her  
18 involvement?  
19 MR. NIX: Object to the form.  
20 A. I don't know, sir.  
21 MR. MOZINGO: Let me look at my notes and we may  
22 be just about done.  
23 WITNESS: All right.  
24 (Break from 5:20 to 5:25 p.m.)  
25 (Back on the record.)

COLUMBIA TRANSCRIPTS, INC.  
803/356-1990  
800/923-8899

302

1 BY MR. MOZINGO:  
2 Q. I show you what's previously been marked as  
3 Plaintiffs' Exhibit 20 and Plaintiffs' Exhibit 42. By the  
4 way, they are the same except there is a date that is  
5 different on the back page. Referring to the  
6 qualifications for the Departmental Assistant Personnel  
7 Manager, why was a master's degree preferred?  
8 A. I don't recall that discussion, sir.  
9 Q. Were you aware one was preferred?  
10 A. I don't recall. I did recall that a bachelor's  
11 degree was required for it. And that in my interpretation  
12 of this that if you had a bachelor's degree but did not  
13 have a master's that would not preclude you from the  
14 selection criteria.  
15 Q. But it does state, this is the notice, the  
16 announcement that was sent out, that a preference will be  
17 given to an individual with a master's degree?  
18 A. Yes, sir.  
19 Q. But you don't know why there is such a  
20 preference?  
21 A. Well, I am not speaking specifically towards  
22 this, but certainly a person who's received a bachelor  
23 degree and four years of college and a master's degree and  
24 two years or three years of additional education might be  
25 more highly valued and more highly sought after. This was

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1 a position, if this is the one we are talking about for the  
2 Department of Mental Health, is a critical position. It  
3 provides much more extensive work and interpretation and  
4 assistance than a Facility Personnel Director. I wouldn't  
5 have any objection to that.  
6 Q. It doesn't require as much work or responsibility  
7 as the Departmental Personnel Manager, does it?  
8 A. Pardon?  
9 Q. It would not require an equal or greater degree  
10 of responsibility or skill than the Departmental Personnel  
11 Manager, would it?  
12 A. Not Mr. Ervin and in his current capacity, but I  
13 would imagine that if Mr. Ervin was to retire or resign  
14 from the Department that when that job description was  
15 done, that it would be reflective of the knowledge, skills,  
16 ability and qualifications of the assistant. And that was  
17 a common practice at the Department to allow incumbents to  
18 complete their tenure at the agency and then amend the job  
19 description once the job was vacated.  
20 Q. So you believe when Mr. Ervin ceases working with  
21 Central Personal, based upon your experience, that the job  
22 qualifications for the position he's vacating will be  
23 amended to reflect the qualifications for the assistant?  
24 A. Well no. I am saying I don't know what the  
25 Department will do. That seemed like a natural evolution

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304

1 for the process, and it is commensurate with what I have  
2 witnessed in organizations.  
3 Q. So assuming then the natural evolution occurs as  
4 you have described, then when Mr. Ervin vacates his job,  
5 then the job specs for his position will be revised to  
6 reflect at least what is required for this Assistant  
7 Personnel Manager?  
8 A. If I were in the position of Associate  
9 Commissioner, I would recommend that if those are the  
10 circumstances existing.  
11 Q. Would you do that with every managerial position  
12 in the Department or just certain managerial positions?  
13 A. I don't know. I would review the job specs for  
14 any job vacancy in a senior management position for the  
15 Department upon vacating to see whether or not the skill  
16 sets, the current needs of the organization match up well  
17 to the current job description, so you do conduct that  
18 review. And if we had a vacating of a position like this  
19 where Mr. Ervin would have been the senior person in that  
20 area, and a junior position required higher qualifications,  
21 knowledge, skills and abilities, that as he vacated that  
22 position I would probably review that job description to  
23 update it and make it current.  
24 Q. What if the job itself has not changed from when  
25 Mr. Ervin took over?

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1 A. If the job had not changed?  
2 Q. Correct. The core functions of the job, what if  
3 they had not changed? Would you still revise it?  
4 A. But the job functions have changed. Part of the  
5 strategic planning process would require that the job  
6 function change. We spoke to that. Some of the knowledge,  
7 skills, that I would be looking for in the successor for  
8 that position, I think, would be much more highly qualified  
9 as far as their skill set is concerned than what Mr. Ervin  
10 possessed.  
11 Q. So if you were still with the Department, then  
12 you would recommend that the skill set or required skill  
13 set for the position of Departmental Personnel Manager be  
14 even increased over the skill set possessed by Mr. Ervin?  
15 A. If what you have shared with me today is a true  
16 and accurate depiction of his current job description, yes.  
17 Q. What if the work of the Department is generally  
18 the same as it's always been?  
19 A. The work of the Department is never generally the  
20 same.  
21 Q. When I say Department, I mean Central Personnel.  
22 A. The work of Central Personnel is not generating  
23 the same. We operated in a health care environment. That  
24 is a dynamic environment in which we operate in. If that  
25 department is going to remain competitive with all of these

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306

1 entities that we compete for talent and personnel with,  
2 that department has to change as well.  
3 Q. And the Department would remain competitive by  
4 increasing the qualifications for existing positions within  
5 the Department?  
6 A. I think that would make them more competitive,  
7 yes.  
8 Q. Would increasing the salary also make it more  
9 competitive?  
10 A. Well, I think salary is a component as well. It  
11 would not make us competitive if we continue to seek a  
12 lower skilled, lower qualified employee. Raising the  
13 salary alone would not do that. Raising the skill sets,  
14 knowledge and abilities and qualifications of people is  
15 what moves organizations, not salary.  
16 Q. And the way to raise the skill sets in your  
17 opinion is to increase the qualifications necessary for a  
18 position?  
19 A. What's that?  
20 Q. And the way to raise the skill set---  
21 A. A way, yes.  
22 Q. A way?  
23 A. Yes. Another way would be professional  
24 development internally. You could have programs that sent  
25 people back for additional knowledge, skills and abilities.

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1 You could have programs that subsidize employee expense for  
2 going out and getting associate's degrees, bachelor's  
3 degrees, degrees that are associated with their job-related  
4 field. Increasing the skill set on our part says this is a  
5 set of requisite skills from a pool we would like to  
6 attract.  
7 Q. But if you truly want to attract a particular  
8 individual or individuals with particular skills, then the  
9 best way to attract them is through salary range, right?  
10 A. Oh, no, sir. I don't know where you got that  
11 from. Why would that be the case?  
12 Q. Just in common experience you don't find that the  
13 most qualified also seek the highest salary?  
14 A. Do you believe the most qualified seek the higher  
15 salary? I don't believe that. I've seen a lot of people  
16 that make a lot more money than me who aren't as qualified  
17 as I am.  
18 Q. That happens, doesn't it?  
19 A. It does.  
20 Q. People that aren't as qualified---  
21 A. Make a lot more money.  
22 Q. ---and are given opportunities that may be denied  
23 to you?  
24 A. I don't know if it's going to be denied to me or  
25 anyone. I am just saying I've seen people who make a lot

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308

1 more money than me who aren't qualified.  
2 Q. Was there any consideration given during your  
3 tenure with the Department of Mental Health into increasing  
4 the salary range for the position held by Henry Ervin?  
5 A. I don't recall. I don't know.  
6 Q. That was never done?  
7 A. I don't know.  
8 Q. Was any effort made by the Department during your  
9 tenure to eliminate the classification system?  
10 A. To eliminate the classification system?  
11 Q. Correct.  
12 A. I don't recall that, no, sir. What do you mean  
13 eliminate the classification system?  
14 Q. Well, for example ---  
15 (Brief interruption.)  
16 (Back on the record.)  
17 BY MR. MOZINGO:  
18 Q. Mr. Dillihay, are you aware that the State of  
19 Alabama uses a personnel system?  
20 A. Yes, sir.  
21 Q. I'm sorry. Strike that. It's late. My thoughts  
22 are really swimming around. What I meant to say is are you  
23 aware that the State of Alabama uses a merit system?  
24 A. Yes.  
25 Q. Is that merit system based upon a classification

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1 system?  
2 A. Is it based upon a classification system?  
3 Q. Does it utilize a classification?  
4 A. It utilizes classification. So does the exempt  
5 system.  
6 Q. The exempt system which is used by the Department  
7 of Mental Health utilizes the classification system,  
8 correct?  
9 A. They both have a classification system.  
10 Q. Yes. I think that is what I was asking.  
11 A. Yes.  
12 Q. They both have a classification system?  
13 A. Yes.  
14 Q. What is the purpose of that classification  
15 system?  
16 A. What is the purpose of the class -- I would  
17 imagine it's to promote the overall efficiency and  
18 management of State Government.  
19 Q. How does a classification do that?  
20 A. How does a classification system do that?  
21 Q. Yes, sir.  
22 A. By matching knowledge, skills and abilities to  
23 job-related functions and compensation.  
24 Q. Let me make sure I understand that. Knowledge,  
25 skills and abilities with what?

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310

1 A. Job classification and compensation.  
2 Q. So they group knowledge, skills and abilities  
3 with compensation?  
4 A. I don't know how they group it, Mr. Mozingo. I  
5 am just giving you a general overall nature of how a  
6 classification system and what it would include.  
7 Q. What I should do then is I didn't hear all of  
8 your response. What I should do is ask you to restate it,  
9 because I didn't hear everything that you said. So could  
10 you please restate the purpose of a classification?  
11 A. The purpose of a classification system is to  
12 promote the overall efficiency of State Government.  
13 Q. I think I asked you how it did that and you said  
14 group and that's what I missed.  
15 A. By grouping job classifications, knowledge,  
16 skills and abilities and compensation.  
17 Q. Can the State Department of Mental Health ever  
18 amend or revise any jobs within a particular classification  
19 system?  
20 MR. NIX: I'm sorry. Would you repeat that?  
21 BY MR. MOZINGO:  
22 Q. Can the State Department of Mental Health amend  
23 or revise jobs within its classification system?  
24 A. I would imagine they can.  
25 Q. For example, the plaintiffs, Ms. Owens and

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1 Ms. Hubbard, are Personnel Specialist III's. Do you  
2 understand that to be correct?  
3 A. Yes.  
4 Q. And there would be a class then of Personnel  
5 Specialist, correct?  
6 A. Yes.  
7 Q. Because there would be a I, a II, and a III?  
8 A. Could be.  
9 Q. I believe with Alabama Mental Health there is  
10 such a class.  
11 A. May be.  
12 Q. You don't recall that?  
13 A. No, sir.  
14 Q. Can the Department of Mental Health ever amend or  
15 revise any jobs within that class such as--  
16 A. Their's?  
17 Q. Personnel Specialist I, II or III?  
18 A. I don't know the answer to that question without  
19 looking at the regs and how they speak to their specific  
20 jobs.  
21 Q. But the Department of Mental Health would have  
22 the power and authority to revise jobs within its class  
23 structure, correct?  
24 A. I imagine they do have some authority. I don't  
25 know how limited their authority may be. It depends if

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312

1 you're talking about merit system or exempt system.  
2 Q. I am talking about exempt system. They would  
3 have the authority to amend or revise jobs within existing  
4 exempt class structures, correct?  
5 A. I don't know specifically without checking what  
6 their authority delegation would be, but I would imagine  
7 they would have the capacity to do some.  
8 Q. So you don't recall, as we sit here, from your  
9 work with the Department whether they have such authority?  
10 A. No. Not without reading the regs and the  
11 delegation of authority.  
12 Q. Did you read the regs concerning the Department  
13 any time prior to accepting your position as Associate  
14 Commissioner?  
15 A. Did I read the regs prior to accepting? No, I  
16 didn't see any regs until after I was hired.  
17 Q. After you were hired, did you read regs?  
18 A. Yes, sir.  
19 Q. Concerning the Department?  
20 A. Yes, sir.  
21 Q. Do you remember what regs you read?  
22 A. No, sir.  
23 Q. Do you remember reading any regulations  
24 concerning the establishment, function or use of an exempt  
25 system within the Department of Mental Health?

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1 A. Not specifically, no, sir.  
2 MR. MOZINGO: I'm done.  
3 (At 5:45 p.m., the deposition was  
4 concluded.)  
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314

1 CERTIFICATE OF REPORTER  
2

3 STATE OF SOUTH CAROLINA )  
4 COUNTY OF LEXINGTON )  
5

6 I, Judith H. Hayes, Certified Court Reporter and  
7 Notary Public for the State of South Carolina at large,  
8 hereby certify that I reported the foregoing deposition  
9 of the witness at the time and place hereinabove set forth;  
10 that the witness was duly sworn, and that the foregoing  
11 pages numbered from 5 through 313, inclusive, constitute  
12 a true and correct transcription of my stenographic  
13 report of the witness.

14 I further certify that I am neither attorney nor  
15 counsel for, nor related to or employed by any of the  
16 parties connected to the action, nor am I financially  
17 interested in the action.

18 Witness my hand and seal at Lexington, South  
19 Carolina this 17th day of June, 2008.  
20  
21  
22

23 Judith H. Hayes, Certified Court Reporter  
24 Notary Public, State of South Carolina at Large  
25 My Commission Expires: 1/14/15.

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**DEPOSITION OF JOHN M. HOUSTON**

**June 24, 2008**

**Pages 1 through 223**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: haislipragan@charter.net**

**Plaintiffs'  
Exhibit 111**



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

vs.

CIVIL ACTION NO.  
2:07-cv-650-WHA

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF JOHN M. HOUSTON, taken  
pursuant to stipulation and agreement before Lyn  
Daugherty, ACCR #66, Certified Court Reporter and  
Commissioner for the State of Alabama at Large, in  
the Law Offices of Nix, Holtsford, Gilliland,  
Higgins & Hitson, 4001 Carmichael Road, Suite 300,  
Montgomery, Alabama, on Thursday, June 26th, 2008,  
commencing at approximately 12:50 p.m.

\* \* \* \* \*

Deposition of John M. Houston

June 26, 2008

Page 2

## 1 APPEARANCES

## 2 FOR THE PLAINTIFFS:

3 Mr. J. Flynn Mozingo  
 4 MELTON, ESPY & WILLIAMS  
 5 Attorneys at Law  
 6 255 Dexter Avenue  
 7 Montgomery, Alabama 36104

## 8 FOR THE DEFENDANTS:

9 Mr. H.E. Nix, Jr.  
 10 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON  
 11 Attorneys at Law  
 12 4001 Carmichael Road, Suite 300  
 13 Montgomery, Alabama 36106

14 Mr. Courtney W. Tarver  
 15 Deputy Attorney General and General Counsel  
 16 Bureau of Legal Services  
 17 ADHM/MR  
 18 RSA Union Building  
 19 100 North Union Street  
 20 Montgomery, Alabama 36130

21 ALSO PRESENT: Ms. Joan Owens  
 22 Ms. Lynn Hubbard

23 \*\*\*\*\*

## 24 EXAMINATION INDEX

25 JOHN M. HOUSTON  
 26 BY MR. MOZINGO ..... 6

27 (Index continued on next page)

Page 4

1 94 Job specification for Manager of 198  
 2 Employee Relations

3 101 Job specification for Personnel Manager 177

4 I

5 102 Job specification for Personnel Manager 178

6 II

7 103 Job specification for Personnel Manager 178

8 III

9 104 Job specification for Personnel Manager 180

10 IV

11 105 Page from Department of Mental Health's 183  
 12 web site

13 Plaintiffs' Exhibits 95, 96, 97, 98, 99 and 100 not  
 14 marked.

15 \*\*\*\*\*

Page 3

## 1 EXHIBIT INDEX

## 2 PAGE

## 3 Plaintiff

4 79 Notice to take deposition duces tecum 9  
 5 80 Curriculum vitae 11  
 6 81 Excerpt from Alabama Administrative Code 31  
 7 82 Defendant John Houston's responses to 45  
 8 plaintiffs' first consolidated discovery

9 83 Excerpt from Alabama Administrative Code 58

10 84 Job specification for Nursing Home 184  
 11 Administrator I

12 85 Job specification for Nursing Home 185  
 13 Administrator II

14 86 Job specification for Administrator III 186

15 87 Job specification for Administrator IV 186

16 88 Job specification for Administrator V 187

17 89 Job specification for Administrator VI 187

18 90 Job specification for Health Facilities 187  
 19 Manager

20 91 Job specification for Assistant Facility 188  
 21 director

22 92 Job specification for Staff Development 188  
 23 Specialist V

24 93 Job specification for Director of 188  
 25 Residential Services

26 (Index continued on next page)

Page 5

## 1 STIPULATIONS

2 It is hereby stipulated and agreed by and  
 3 between counsel representing the parties that the  
 4 deposition of JOHN M. HOUSTON is taken pursuant to  
 5 the Federal Rules of Civil Procedure and that said  
 6 deposition may be taken before Lyn Daugherty,  
 7 Certified Shorthand Reporter, and Commissioner for  
 8 the State of Alabama at Large, without the  
 9 formality of a commission, that objections to  
 10 questions other than objections as to the form of  
 11 the question need not be made at this time but may  
 12 be reserved for a ruling at such time as the said  
 13 deposition may be offered in evidence or used for  
 14 any other purpose by either party provided for by  
 15 the Statute.

16 It is further stipulated and agreed by and  
 17 between counsel representing the parties in this  
 18 case that the filing of said deposition is hereby  
 19 waived and may be introduced at the trial of this  
 20 case or used in any other manner by either party  
 21 hereto provided for by the Statute regardless of  
 22 the waiving of the filing of the same.

23 It is further stipulated and agreed by and

Deposition of John M. Houston

June 26, 2008

Page 6

1 between the parties hereto and the witness that the  
2 signature of the witness to this deposition is  
3 hereby waived.

4 \* \* \* \* \*

5 JOHN M. HOUSTON

6 The witness, after having first been duly sworn  
7 to speak the truth, the whole truth and nothing but  
8 the truth testified as follows:

9 EXAMINATION

10 BY MR. MOZINGO:

11 Q. Can you state your full name for the  
12 record?

13 A. John Houston.

14 Q. What is your occupation or profession?

15 A. Commissioner of the Department of Mental  
16 Health and Mental Retardation.

17 Q. How long have you held that position?

18 A. Since August of 2005.

19 Q. Were you acting in the capacity as  
20 commissioner of the Department of Mental  
21 Health prior to August 2005?

22 A. From February 1 of 2005 until August. I'm  
23 not sure what date in August. Until the

Page 7

1 appointment.

2 Q. So I take that as a, yes, you were?

3 A. Yes.

4 Q. And who was the commissioner or acting  
5 commissioner prior to February 2005?

6 A. Kathy Sawyer.

7 Q. May I call you Commissioner Houston --

8 A. You can call me John.

9 Q. -- for purposes of this deposition?

10 A. Whatever you like.

11 Q. Commissioner Houston, what is your full  
12 name? Is it just John Houston, or do you  
13 have a first or middle name?

14 A. Middle. It's Michel, M-I-C-H-E-L.

15 Q. How was it that you came to be the acting  
16 commissioner back in 2005?

17 A. Governor Riley appointed me.

18 Q. And is the position of commissioner with  
19 the Alabama Department of Mental Health an  
20 appointed position?

21 A. Yes.

22 Q. And it is the governor of the state of  
23 Alabama that makes that appointment?

Page 8

1 A. Yes.

2 Q. I take it, then, that he subsequently  
3 appointed you the commissioner from your  
4 status as acting commissioner?

5 A. Yes. Yes.

6 Q. Can you explain -- And I don't really  
7 understand that. Can you explain to me why  
8 you were appointed acting commissioner and  
9 not commissioner back in February 2005?

10 A. No.

11 Q. But when you initially received the  
12 appointment -- you're laughing -- or  
13 smiling. Is there something I'm missing  
14 there?

15 A. Well, I would have to put myself in the  
16 mind of the governor. There's quite a  
17 number of factors he may have considered,  
18 and I could not tell you definitively what  
19 was on his mind.

20 Q. And I appreciate that, but do you have any  
21 understanding in your mind why you were  
22 appointed acting commissioner as opposed to  
23 the commissioner back in February 2005?

Page 9

1 A. Assumptions that I might make in that  
2 regard?

3 Q. Yes, sir.

4 MR. NIX: If you know. Don't make  
5 assumptions. But if you do  
6 know, tell him that. We don't  
7 want you to guess, though.  
8 I'm sure Flynn does not  
9 want --

10 Q. No, I don't want you to guess.

11 A. As to why I was appointed acting?

12 Q. Why you were appointed acting first before  
13 being appointed the commissioner.

14 A. It's fairly typical. I really don't. You  
15 know, I could speculate, but that's what it  
16 would be.

17 Q. That's fine.

18 Commissioner Houston, let me show you  
19 what has been marked as Plaintiffs' Exhibit  
20 79. And this is simply the notice for your  
21 deposition today. Have you seen that  
22 document before?

23 (Plaintiffs' Exhibit 79 was marked

Deposition of John M. Houston

June 26, 2008

Page 10	Page 12
<p>1 for identification.)</p> <p>2 A. I believe so.</p> <p>3 Q. And you will notice that there is a</p> <p>4 production request attached to that</p> <p>5 document. Have you reviewed the production</p> <p>6 request before?</p> <p>7 A. Yes.</p> <p>8 Q. Now, I did receive documents from your</p> <p>9 attorney in response to the plaintiffs'</p> <p>10 consolidated discovery directed to you, and</p> <p>11 I will represent to you that the production</p> <p>12 request on the back of your deposition</p> <p>13 notice is the same as the production</p> <p>14 request in the consolidated discovery. You</p> <p>15 may have already noticed that yourself.</p> <p>16 And my question is, are there any documents</p> <p>17 that you may have that's responsive to that</p> <p>18 discovery request attached to your</p> <p>19 deposition notice that have not been</p> <p>20 produced to me?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Do you have, by the way, an existing</p> <p>23 up-to-date resume or CV?</p>	<p>1 produce some additional ones</p> <p>2 or other ones.</p> <p>3 MR. MOZINGO: Okay. And I'm --</p> <p>4 It's very possible that you</p> <p>5 did, because a lot of the</p> <p>6 production I've received to</p> <p>7 date has been piecemeal.</p> <p>8 MR. NIX: That's true.</p> <p>9 MR. MOZINGO: So I may not have</p> <p>10 had this in my grouping for</p> <p>11 Commissioner Houston, so it's</p> <p>12 very well that you may.</p> <p>13 A. The only updating that I would make note of</p> <p>14 is simply the appointment of commissioner</p> <p>15 and those responsibilities.</p> <p>16 Q. And I was going to ask you, you see on</p> <p>17 Plaintiffs' Exhibit 80 there is handwriting</p> <p>18 on the top of the first page, the second</p> <p>19 page and the third page. Is that your</p> <p>20 handwriting?</p> <p>21 A. I believe it is.</p> <p>22 Q. And it appears --</p> <p>23 A. I'm not certain, but it appears to me.</p>
Page 11	Page 13
<p>1 A. I believe that's been provided to you.</p> <p>2 That would be the most recent.</p> <p>3 (Plaintiffs' Exhibit 80 was marked</p> <p>4 for identification.)</p> <p>5 Q. Well, I'm going to show you what I have for</p> <p>6 your CV and I'm marking it Plaintiffs'</p> <p>7 Exhibit 80. I'm handing that to you now</p> <p>8 for the record. Is Plaintiffs' Exhibit 80</p> <p>9 your most recent up-to-date resume or CV,</p> <p>10 however you would like to refer to it?</p> <p>11 A. I'm not aware of any more recent. I notice</p> <p>12 that this probably could warrant some</p> <p>13 updating, but I'm not aware that there's</p> <p>14 any that has been done since then.</p> <p>15 MR. NIX: I think we produced -- I</p> <p>16 know that came from</p> <p>17 Commissioner Houston's</p> <p>18 personnel file. But I think</p> <p>19 we produced some resumes on</p> <p>20 the defendants that were not</p> <p>21 marked up like that, although</p> <p>22 I'd just have to assume they</p> <p>23 were updated. I think we did</p>	<p>1 Q. And it appears to me that you were -- or</p> <p>2 may have been primarily just further</p> <p>3 refining some dates on this resume?</p> <p>4 A. Yes.</p> <p>5 Q. But we do know that one difference between</p> <p>6 this resume and your present status is that</p> <p>7 now you're the acting commissioner of the</p> <p>8 Alabama Department of Mental Health -- I'm</p> <p>9 sorry. Not acting. You are the</p> <p>10 commissioner of the Alabama Department of</p> <p>11 Mental Health whereas on Plaintiffs'</p> <p>12 Exhibit 80 at that time you were working as</p> <p>13 the executive assistant to the</p> <p>14 commissioner?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you go from your capacity as executive</p> <p>17 assistant to commissioner to the acting</p> <p>18 commissioner in February 2005?</p> <p>19 A. Yes.</p> <p>20 Q. The duties and responsibilities that are</p> <p>21 reflected in Plaintiffs' Exhibit 80, is</p> <p>22 that a true and accurate general reflection</p> <p>23 of your duties and responsibilities for the</p>

Deposition of John M. Houston

June 26, 2008

Page 14

1        respective jobs that are referenced there?

2        A. Yes.

3        Q. Now, you became the executive assistant to

4        the commissioner in 1995 according to

5        Plaintiffs' Exhibit 80; is that correct?

6        A. I believe so, yes.

7        Q. Or it could be January 1986, but

8        thereabouts?

9        A. Yes.

10       Q. Were you appointed executive assistant, or

11       is that a position you have to apply for

12       and be accepted? Or a combination of both?

13       A. It was not one for which I applied. I was

14       appointed to that position.

15       Q. And who appointed you to executive

16       assistant to the commissioner?

17       A. I believe Emmitt Poundstone did.

18       Q. And Mr. Poundstone, was he the commissioner

19       at the time of your appointment?

20       A. I believe so.

21       Q. And when did he cease to be the

22       commissioner?

23       A. He served for a year and a day. I'm not

Page 15

1        sure the exact dates.

2        Q. And who succeeded Mr. Poundstone?

3        A. You're going to challenge my memory now.

4        Q. I'm not meaning to. I'm just trying to

5        educate myself.

6        A. I believe that Charles Fetner was on

7        interim basis and then Virginia Rogers.

8        Q. And after Virginia Rogers who was the next

9        commissioner?

10       A. Kathy Sawyer.

11       Q. And then you subsequently became

12       commissioner?

13       A. Uh-huh (positive response).

14       Q. And you served as the executive assistant

15       for all of the commissioners that you've

16       just identified?

17       A. That's correct.

18       Q. Very generally what does -- what is the job

19       of the executive assistant to the

20       commissioner?

21       A. It depends on the commissioner.

22       Q. Okay. Could you explain that to me?

23       A. Different commissioners bring different

Page 16

1        strengths or different interests to the

2        position, different styles of management.

3        Some focus more on other areas than

4        others. It may be financial and

5        contractual issues in one case. It may be

6        programming in other -- you know,

7        legislative matters in another. So the

8        executive assistant to some extent makes --

9        adapts the responsibilities to the

10       particular commissioners, whatever they

11       describe. Now, in general executive

12       assistant would handle a lot of

13       responsibilities in some cases that would

14       free up the commissioner to attend to other

15       matters. It may be routine

16       correspondence. It may be just in handling

17       some meetings or some persons of interest

18       who came by for whatever reason. On other

19       occasions there may be a particular issue

20       that needs to be resolved or addressed

21       where I may serve as the representative of

22       the commissioner in forming a task force

23       committee, whatever it might be, work

Page 17

1        group, whatever it might be to address that

2        issue. A lot of my responsibilities

3        included representing the commissioners,

4        various commissioners at different meetings

5        of one type or another, substantive and

6        otherwise. A great deal of my time was

7        spent on matters relative to children's

8        service. That's probably the broadest area

9        of responsibility that I had.

10       Q. Would a good analogy be to describe your

11       position as executive assistant to the

12       commissioner -- would it be that you kind

13       of serve as a right hand to the

14       commissioner?

15       A. It has been described that way at times. I

16       think that would be accurate.

17       Q. Well, in that case, then, what is the

18       difference between an executive assistant

19       to the commissioner and an associate

20       commissioner?

21       A. The associate commissioners are named in

22       statute those positions with responsibility

23       over the four major divisions of the



Deposition of John M. Houston

June 26, 2008

Page 18

department. And so their responsibilities are directed in a very broad way over those divisional activities, whether it's mental retardation, mental illness, substance abuse or administration. So it's specific to those areas. The executive assistant -- Let me back up. The associate has direct responsibility and authority over those areas. The executive assistant has the authority in whatever regard that the commissioner gives him or her. It is not a line authority over associate commissioners, for example. It's a staff position to the commissioner.

Q. An associate commissioner position, however, is an appointed position; is that correct?

A. That's correct.

Q. Just like the commissioner's position?

A. That is correct.

Q. But the associate commissioners are appointed by the commissioner; is that correct?

Page 19

A. That's correct.

Q. And the executive assistant would be -- the executive assistant to the commissioner would be appointed by the commissioner as well?

A. Yes.

Q. What associate commissioners have you had an opportunity to appoint since becoming the acting or the commissioner?

A. Susan Chambers over the mental illness division. Pat Martin over the mental retardation division. David Bennett over the administrative division.

Q. Is Susan Chambers white or black?

A. She is white.

Q. Is Pat Martin white or black?

A. White.

Q. Is David Bennett white or black?

A. Black.

Q. And David Bennett succeeded Otha Dillihay; is that correct?

A. That is correct.

Q. Who is likewise black?

Page 20

A. That is correct.

Q. Who did Otha Dillihay succeed?

A. I believe it was Ross Hart.

Q. You're not sure?

A. A lot of people come and go. It challenges my memory to remember all that. Ross was there and I believe it was -- that he was the immediate predecessor.

Q. Is Ross Hart white or black?

A. White.

Q. Now, you have served either as an executive assistant to the commissioner or as the commissioner since approximately 1995 or 1996 -- I'm sorry -- since -- I'm looking at two different dates in your resume. One says '95 next to executive assistant and then above it it says 1986, so I'm confused.

A. I think there were different responsibilities or areas of responsibility there. The appointment as executive assistant would go back to 1986. I was executive assistant to -- let me clarify

Page 21

this. What we have here is responsibilities and positions within the department. Within that I served as executive assistant to the associate commissioner for administration and the associate commissioner for mental illness, both of which were Emmitt Poundstone. That was a period of time within the Department of Mental Health. When Emmitt was appointed commissioner -- and that would be 1995, I believe -- that's when I was appointed executive assistant to the commissioner.

Q. Okay. But you have served, then, in a capacity as executive assistant to the commissioner or an associate commissioner since at least 1986?

A. That's correct.

Q. And the office of commissioner and associate commissioner would all be located at the central office or headquarters, for lack of better word, of the Alabama Department of Mental Health?

Deposition of John M. Houston

June 26, 2008

Page 22	Page 24
<p>1 A. That's correct.</p> <p>2 Q. And so you have approximately 22 years,</p> <p>3 then, working there in the central office</p> <p>4 of the Alabama Department of Mental Health?</p> <p>5 A. Correct.</p> <p>6 Q. Do you feel like in that 22-year period</p> <p>7 you've obtained broad experience in working</p> <p>8 with the Department of Mental Health?</p> <p>9 A. I would think so.</p> <p>10 Q. Do you feel like you have extensive</p> <p>11 knowledge of the policies and practice of</p> <p>12 the Alabama Department of Mental Health</p> <p>13 since 1986?</p> <p>14 A. Since then or acquired during that period?</p> <p>15 Q. How can you best answer the question?</p> <p>16 A. Acquired during that period, yes.</p> <p>17 Q. You certainly had extensive knowledge of</p> <p>18 the policies and practices of the Alabama</p> <p>19 Department of Mental Health by the year</p> <p>20 2004; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Because you had served almost 20 years in</p> <p>23 the central office by that date; correct?</p>	<p>1 is whether the institute is an agency or</p> <p>2 facility or department of the mental health</p> <p>3 department?</p> <p>4 A. It is not.</p> <p>5 Q. In that case, is there any relationship or</p> <p>6 association between the institute and the</p> <p>7 Department of Mental Health?</p> <p>8 A. I think the appropriate answer would be</p> <p>9 no. The reason I would hesitate is</p> <p>10 association is a very broad subject. We</p> <p>11 had dealings with the institute. The</p> <p>12 department and the institute serve -- are</p> <p>13 represented on some bodies where they work</p> <p>14 together. Those type of associations.</p> <p>15 Q. Is the institute a state entity?</p> <p>16 A. Yes.</p> <p>17 Q. Is it its own separate entity, or does the</p> <p>18 institute fall within the purview of</p> <p>19 another state agency or department?</p> <p>20 A. It's its own separate entity.</p> <p>21 Q. Can you briefly describe your work with the</p> <p>22 institute between 1980 and 1986?</p> <p>23 A. Briefly. I joined the institute I believe</p>
Page 23	Page 25
<p>1 A. Correct.</p> <p>2 Q. Now, prior to going to work in the central</p> <p>3 office in 1986, is it true that you worked</p> <p>4 with the Alabama Institute for Deaf and</p> <p>5 Blind?</p> <p>6 A. That's correct.</p> <p>7 Q. Is there some association between the</p> <p>8 institute and the Alabama Department of</p> <p>9 Mental Health?</p> <p>10 A. Can you define associations or what you</p> <p>11 mean by that?</p> <p>12 Q. Well, let me define first, when I talk</p> <p>13 about the Alabama Department of Mental</p> <p>14 Health or the Mental Health Department,</p> <p>15 it's my understanding that the actual legal</p> <p>16 name is the Alabama Department of Mental</p> <p>17 Health and Mental Retardation.</p> <p>18 A. Correct.</p> <p>19 Q. That's a very long title. I shorten it. I</p> <p>20 would imagine you shorten it, too, in your</p> <p>21 daily conversation.</p> <p>22 A. It's common practice.</p> <p>23 Q. So what I'm asking regarding the institute</p>	<p>1 it was November of 1980. I worked briefly</p> <p>2 in the development office there. The</p> <p>3 institute underwent a reorganization soon</p> <p>4 afterward. I assumed responsibility over</p> <p>5 the student services area of the adult</p> <p>6 programs at E.H. Gentry, a technical</p> <p>7 facility which is a part of the institute.</p> <p>8 This included responsibility for the social</p> <p>9 service program, recreational program,</p> <p>10 extended care, extended day programs,</p> <p>11 development of case management program and</p> <p>12 other related duties. So I served on</p> <p>13 management team for the Gentry facility.</p> <p>14 Subsequently was appointed director of the</p> <p>15 Sunbelt Regional Center, which was a</p> <p>16 federal project dealing at different times</p> <p>17 with around 10 states working with</p> <p>18 Departments of Education and other state</p> <p>19 entities across those programs regarding</p> <p>20 individuals who were severely</p> <p>21 handicapped -- deaf, blind and severely</p> <p>22 handicapped.</p> <p>23 Q. Now, Commissioner Houston, when you first</p>

Deposition of John M. Houston

June 26, 2008

Page 26

1 started working with the Department of  
 2 Mental Health, you were an executive  
 3 assistant to the associate commissioner in  
 4 the administrative division and  
 5 subsequently became executive assistant to  
 6 the associate commissioner in the mental  
 7 health division; is that correct?  
 8 A. That's correct.  
 9 Q. Can you explain --  
 10 A. Mental illness division.  
 11 Q. Thank you for that correction. Can you  
 12 explain the difference between the  
 13 administrative division and the mental  
 14 illness division, if there is one?  
 15 A. Well, mental illness division concerns  
 16 services for individuals with serious  
 17 mental illness or children and adolescents  
 18 with serious emotional disturbance both  
 19 with state facilities that deal with those  
 20 populations and with community programs all  
 21 over the state that deals with those  
 22 populations. The administrative division  
 23 primarily is a support division for the

Page 27

1 others and deals with administrative  
 2 matters broadly speaking that cut across  
 3 the entire department.  
 4 Q. We are here today as a result of a lawsuit  
 5 filed against you by Ms. Joan Owens -- I'm  
 6 sorry -- Ms. Joan Owens and Ms. Lynn  
 7 Hubbard. And I had to correct myself  
 8 because I -- as Chip, your attorney, will  
 9 tell you, I have a tendency to combine  
 10 names and substitute names. I always have  
 11 to think twice anytime I say a name. But,  
 12 anyway, we're here today taking your  
 13 deposition for that lawsuit. What  
 14 department do Ms. Owens and Ms. Hubbard  
 15 work at the Alabama Department of Mental  
 16 Health?  
 17 A. Personnel.  
 18 Q. In fact, they work in the -- I think it's  
 19 called the central personnel office; is  
 20 that correct?  
 21 A. Yes.  
 22 Q. And central personnel meaning -- the way  
 23 I've heard it explained to me is there are

Page 28

1 personnel offices located at many of the  
 2 mental health facilities outside of  
 3 Montgomery, but then you have the central  
 4 personnel office, which is located at  
 5 the -- at your office in Montgomery; is  
 6 that correct?  
 7 A. Correct.  
 8 Q. Where would the central personnel fall?  
 9 Would it be within the administrative  
 10 division or the mental health division?  
 11 A. Administrative.  
 12 Q. And when you worked as the executive  
 13 assistant to the associate commissioner for  
 14 the administrative division, then you would  
 15 have been working for a commissioner who  
 16 was responsible for overseeing the central  
 17 personnel office; is that correct?  
 18 A. That's correct.  
 19 Q. And you were responsible for managing the  
 20 administrative division in that associate  
 21 commissioner's absence; correct?  
 22 A. On occasion.  
 23 Q. And that would include managing the central

Page 29

1 personnel office?  
 2 A. Yes.  
 3 Q. And when you became the executive assistant  
 4 to the commissioner, you would have  
 5 assisted the -- either the commissioner or  
 6 the associate commissioner as the case may  
 7 be with the review and his management of  
 8 the essential functions and staffing needs  
 9 of the central office; is that correct?  
 10 A. In my capacity as executive assistant to  
 11 the commissioner?  
 12 Q. Yes, sir. And I'll be perfectly frank.  
 13 I'm asking that question based upon a  
 14 description contained in your resume and  
 15 I'll point it out to you. It says right  
 16 here -- it begins with during this time,  
 17 fifth sentence up. If you'd like to read  
 18 that sentence. And I'll read it for the  
 19 record. Your resume says, during this time  
 20 I also assisted the associate commissioner  
 21 for administration with a review of  
 22 essential functions and staffing needs in  
 23 the central office. Did I read that

Deposition of John M. Houston

June 26, 2008

Page 30	Page 32
1 correctly?	1 reading the exhibit.
2 A. Yes.	2 (Brief pause.)
3 Q. And that would include the central	3 Q. Okay. You have that exhibit back in front
4 personnel office, would it not?	4 of you; is that correct?
5 A. Yes, it would. That was a specific	5 A. Right.
6 project, if you will, that the associate	6 Q. Are you familiar with that Code section?
7 commissioner implemented to review all	7 A. Yes.
8 areas within administration. And I	8 MR. NIX: Excuse me. You're
9 assisted in that, as did a number of other	9 talking about the
10 staff.	10 Administrative Code section;
11 Q. Obviously today in your capacity as	11 correct?
12 commissioner you are responsible --	12 MR. MOZINGO: Right. And I've
13 ultimately responsible for the central	13 read it into the record and I
14 personnel office?	14 didn't want to repeat it
15 A. Ultimately.	15 because I hate typing those
16 Q. And you are ultimately responsible for the	16 Administrative Code sections
17 employment actions taken by central	17 much less reading them. It's
18 personnel; is that correct?	18 all the hyphens.
19 A. Correct.	19 Q. For the record you're familiar with Section
20 Q. And oftentimes those employment actions may	20 580-1-1-.06 of the Alabama Administrative
21 involve you, whether it be from input that	21 Code?
22 you may give or direction you may give or	22 A. Yes.
23 just the carrying out of some order or	23 Q. And that section sets out your authority
Page 31	Page 33
1 mandate that you may give; is that correct?	1 and duties as the commissioner, does it
2 A. That is correct.	2 not?
3 MR. NIX: Flynn, would you give me	3 A. It does, although I believe it indicates
4 one second?	4 it's not limited in some regard.
5 MR. MOZINGO: Sure.	5 Q. Right. And I was going to say it's
6 (Brief pause.)	6 probably not all-inclusive.
7 (Plaintiffs' Exhibit 81 was marked	7 A. Correct.
8 for identification.)	8 Q. Subparagraph three states, as part of your
9 Q. Commissioner Houston, let me show you what	9 authority, to supervise, coordinate and
10 I have marked as Plaintiffs' Exhibit 81. I	10 establish standards for all operations and
11 will represent to you that that is what I	11 activities of the state related to mental
12 downloaded from the Alabama Administrative	12 health and mental retardation and the
13 Code. And what that reflects -- well, it's	13 providing of mental health services and
14 the Alabama Administrative Code as it	14 mental retardation services. Did I read
15 applies to the Alabama Department of Mental	15 that correctly?
16 Health. And Exhibit 81 that I have given	16 A. Correct.
17 you contains Section 580-1-1-.06, which	17 Q. And would that be an accurate description
18 gives the authority of the commissioner,	18 of your duty and authority as commissioner?
19 which would be you; correct?	19 A. In a broad sense, yes.
20 A. Correct.	20 Q. And in a more narrow sense, would that
21 MR. NIX: Hold on.	21 authority include supervising, coordinating
22 MR. MOZINGO: Let the record	22 and establishing standards for the
23 reflect his attorney is	23 operations and activities of the central



Page 34

1 personnel office?

2 MR. NIX: And you're talking about  
3 this one particular subsection  
4 of this one particular  
5 regulatory provision?

6 MR. MOZINGO: I am. He testified  
7 his duty in a broad sense and  
8 I'm refining it to a more  
9 narrow sense.

10 MR. NIX: I know. I guess what  
11 I'm asking is -- I mean,  
12 you're not -- what you're  
13 doing is limiting the question  
14 to this particular sentence  
15 that you read from Section 3  
16 of this regulatory provision.  
17 Isn't that right?

18 MR. MOZINGO: I wouldn't say  
19 limiting. I'm narrowing it to  
20 make it clear.

21 Q. And correct me if I'm wrong. But the  
22 duties and responsibilities set forth in  
23 paragraph three would include supervising,

Page 35

1 coordinating and establishing standards for  
2 the operations and activity for the central  
3 personnel office at the Alabama Department  
4 of Mental Health?

5 A. Yes.

6 Q. Thank you.

7 MR. NIX: Thanks for putting up  
8 with that clarification  
9 request, but it's important  
10 for me.

11 MR. MOZINGO: No. That's fine.  
12 Off the record.  
13 (Off-the-record discussion.)

14 Q. Commissioner Houston, your resume states  
15 that you were with -- I'm not sure if I'm  
16 pronouncing it correctly -- CETA, C-E-T-A,  
17 Management Coordination Project. Is that  
18 true?

19 A. Correct.

20 Q. Can you explain who that is and what you  
21 did for CETA?

22 A. Comprehensive Education and Training Act.  
23 It was a federal program obviously dealing

Page 36

1 in the employment area. And that  
2 particular project is a federally funded  
3 project that provided, broadly speaking,  
4 technical assistance to organizations --  
5 public organizations primarily that dealt  
6 with individuals with disabilities.

7 Q. Now, that was a -- Was that a federal  
8 government project?

9 A. It's a grant, I believe, yes.

10 Q. It was a -- Okay. What I'm interpreting  
11 that to mean is it was a project  
12 implemented by the state through a federal  
13 grant?

14 A. I believe that ultimately Auburn University  
15 held the grant. CETA is the federal  
16 program and this is one -- one grant that  
17 came out of that program.

18 Q. At the time that you were involved with  
19 that program, who was your employer?

20 A. Employer?

21 Q. Yes, sir.

22 A. Initially I believe it was the Montgomery  
23 Skill Center, which was the fiscal agent.

Page 37

1 And subsequently that responsibility moved  
2 to Auburn University. Basically they both  
3 served as fiscal agents for the project.

4 Q. And I use the word employer. Were you an  
5 employee or an independent contractor?

6 A. Employee.

7 Q. And so you worked for the Montgomery Skill  
8 Center and then for Auburn University?

9 A. They wrote the check, so yes.

10 Q. Who gave the orders, then? How about that?

11 A. Dr. Linda Williamson was the project  
12 director, and I reported directly to her.

13 Q. Was she at Auburn?

14 A. She was here in Montgomery.

15 Q. And before CETA you worked with the  
16 Chattanooga Hamilton County Association For  
17 Retarded Citizens; correct?

18 A. Correct.

19 Q. And it says you were executive director for  
20 that agency.

21 A. That's correct.

22 Q. Which takes us very close to when you  
23 initially finished or were working on your



Page 38

1 degree. And you obtained a bachelor's  
 2 degree from Auburn University in 1971?  
 3 A. Correct.  
 4 Q. What did you obtain your degree in?  
 5 A. Philosophy.  
 6 Q. Did you have plans to go to theology school  
 7 thereafter?  
 8 A. I enjoyed it.  
 9 Q. Philosophy, that is?  
 10 A. Right.  
 11 Q. And then after Auburn you attended the  
 12 University of Alabama; correct?  
 13 A. Correct.  
 14 Q. What dates did you attend Alabama?  
 15 A. I believe it was September 1972 to May --  
 16 approximately May 1975.  
 17 Q. And what degree did you obtain from the  
 18 University of Alabama?  
 19 A. I have a master's in special education and  
 20 a master's in social work.  
 21 Q. And according to your resume you would have  
 22 obtained some other type of degree or  
 23 designation from University of Alabama at

Page 39

1 the same time; is that correct?  
 2 A. I'm not sure what you mean. I worked on  
 3 both of those degrees simultaneously.  
 4 Q. And I'll show you what I'm pointing out if  
 5 you have your resume. I'm pointing out  
 6 right there the MSW. What is that?  
 7 A. Master of social work.  
 8 Q. Master's of social work?  
 9 A. Right.  
 10 Q. And you obtained that from Alabama in 1975?  
 11 A. Right.  
 12 Q. And then you obtained an MA?  
 13 A. Right.  
 14 Q. Which is?  
 15 A. Master of arts.  
 16 Q. Also in 1975?  
 17 A. Correct. If I may, just to clarify.  
 18 Q. Please do.  
 19 A. For the most part during the regular  
 20 academic year I was working on master's in  
 21 social work. In the summers worked on  
 22 master's in special education. I completed  
 23 the MSW I believe it was May of '75 and the

Page 40

1 MA in special ed three months later.  
 2 Q. Now, prior to attending the University of  
 3 Alabama you worked for the Mental  
 4 Retardation Services of Alabama at the  
 5 University; is that correct?  
 6 A. That's correct.  
 7 Q. Was that entity or agency, Mental  
 8 Retardation Services, was that part of what  
 9 is now the Alabama Department of Mental  
 10 Health?  
 11 A. No.  
 12 Q. Then what was it?  
 13 A. It was a federal project that was a  
 14 collaboration between the Department of  
 15 Mental Health, the Department of then  
 16 Pensions and Securities, now DHR. I  
 17 believe it was just those two entities.  
 18 There were different divisions within the  
 19 University that were partners in that as  
 20 well.  
 21 Q. You subsequently worked at Bryce Hospital?  
 22 A. Correct.  
 23 Q. And Bryce is a facility that is owned and

Page 41

1 operated by the Alabama Department of  
 2 Mental Health; correct?  
 3 A. That's correct.  
 4 Q. Is that the largest mental health facility  
 5 in the state?  
 6 A. Yes.  
 7 Q. I guess it could be largest in a number of  
 8 ways. Largest hospital. Would that be  
 9 true?  
 10 A. Yes.  
 11 Q. And would it have the greatest number of  
 12 employees for any facility in the state;  
 13 any mental health facility, that is?  
 14 A. Only reason I'm hesitating is comparison to  
 15 Searcy, but I believe that's correct.  
 16 Bryce would be the largest in number of  
 17 employees.  
 18 Q. How many employees currently work at Bryce?  
 19 A. I don't know.  
 20 Q. Well, would it be two, three hundred?  
 21 A. Six hundred perhaps. Between six and seven  
 22 hundred.  
 23 Q. Okay. Between six and seven hundred.

Page 42

1 A. I'm really not sure. I'd have to go back  
2 and check that.

3 Q. And it's my understanding that Bryce  
4 Hospital has its own personnel office?

5 A. Correct.

6 Q. And I think I've heard testimony that --  
7 and I'm not holding you to it, but I think  
8 it's between eight to ten people work in  
9 that office. Does that sound about right?

10 A. I don't know.

11 Q. You told me earlier that every commissioner  
12 that you worked under has had his or her  
13 own emphasis. What is your emphasis as  
14 commissioner?

15 A. I think I was speaking regarding management  
16 style more than anything else --

17 Q. Okay.

18 A. -- but also in regard to different areas of  
19 interest.

20 Q. Well, what is your emphasis as far as  
21 management style?

22 A. To find the best people that I can find for  
23 a particular position, to discuss with them

Page 43

1 the directions of their particular area of  
2 responsibility and priorities, reach an  
3 agreement on those things or an  
4 understanding with them on those matters,  
5 and to support them in efforts to meet  
6 those responsibilities. It is not one that  
7 is looking over someone's shoulder all the  
8 time and attending to every detail.

9 Q. And as far as your management style of  
10 finding the best people to fill particular  
11 positions, would you describe your  
12 management style as being very hands-on in  
13 that regard?

14 A. In some cases.

15 Q. And can you explain to me why in some  
16 cases?

17 A. Well, key positions that report directly to  
18 me, I would be very hands-on. The farther  
19 removed from that the less hands-on.

20 Q. Well, would you describe your actions  
21 concerning the creation and filling of the  
22 position of Assistant Departmental  
23 Personnel Manager in the central personnel

Page 44

1 office as an example or an occasion of your  
2 own hands-on management?

3 A. I was involved in different stages of that  
4 in a hands-on way. But in a general sense  
5 would I describe that as an example, no.

6 Q. Well, what stages were you involved in in a  
7 hands-on way?

8 A. Well, I had to approve the establishment of  
9 the position for one thing. I was  
10 interested in the operations of that office  
11 and know how important it is. So I would  
12 be interested in the key positions there.  
13 This was the creation of a new position, so  
14 I would be interested in that.

15 Q. Would you describe that position as a key  
16 position?

17 A. Yes.

18 Q. So you approved the establishment of the  
19 position. What else did you approve?

20 A. Relative to?

21 Q. To the job of Departmental Assistant  
22 Personnel Manager.

23 A. The qualifications.

Page 45

1 Q. When you say qualifications, are you  
2 referring to the type of degree that was  
3 required?

4 A. That there was a degree required.

5 Q. But not the type of degree?

6 A. I don't recall discussing that. I'm sure  
7 that at one stage or another that I read or  
8 reviewed that. I don't recall that that  
9 was an issue particularly.

10 Q. But you were involved in approving that a  
11 degree was required?

12 A. Yes.

13 Q. And were you involved in approving or  
14 ensuring that substitution of experience  
15 for education would not be allowed?

16 A. Correct.

17 Q. Is there anything else that you were  
18 involved in regarding that job? And right  
19 now let's just say I'm referring to the  
20 creation of the job.

21 A. Certainly involved in discussions regarding  
22 whether it would be created or not.

23 (Plaintiffs' Exhibit 82 was marked

Deposition of John M. Houston

June 26, 2008

Page 46

1 for identification.)  
 2 Q. Let me show you what I am marking as  
 3 Plaintiffs' Exhibit 82, and that is your  
 4 answers or response to the plaintiffs'  
 5 first consolidated discovery.  
 6 A. Yes.  
 7 Q. Have you seen that document before?  
 8 A. Yes.  
 9 Q. What do you understand that document to be?  
 10 A. My responses to a series of questions that  
 11 were posed by the plaintiffs.  
 12 Q. And wouldn't you know it. Your attorney is  
 13 exactly right. Attached to the back of it,  
 14 I think, is your most recent resume.  
 15 MR. NIX: Not really.  
 16 MR. MOZINGO: Attached to mine.  
 17 How about that.  
 18 Q. We're not going to go over that resume  
 19 again. We've covered that ground. But if  
 20 you will flip -- maybe it is the back of  
 21 yours. It's not the back of mine. But  
 22 there is a verification page. Could be the  
 23 last page of the exhibit in front of you.

Page 47

1 A. Right.  
 2 Q. Is your signature on that page?  
 3 A. It is.  
 4 Q. Above where it says John Houston?  
 5 A. That's right.  
 6 Q. And do you understand that verification to  
 7 be that you were verifying that the answers  
 8 that you have given in the discovery  
 9 response are true and correct?  
 10 A. Yes.  
 11 Q. Are the answers true and correct, to the  
 12 best of your knowledge?  
 13 A. To the best of my knowledge, they are true  
 14 and correct.  
 15 Q. When is the last time you looked at your  
 16 discovery response?  
 17 A. About an hour ago. Parts of it at least.  
 18 Q. In preparation for your deposition?  
 19 A. I just wanted to look over it. I haven't  
 20 seen it or hadn't looked at it since, I  
 21 guess, a month or so. It's been a while.  
 22 Q. What other documents have you reviewed in  
 23 preparation for your deposition?

Page 48

1 MR. NIX: Let me object to that.  
 2 I don't think that that's  
 3 discoverable frankly.  
 4 MR. MOZINGO: I think I can ask  
 5 him what he's reviewed. I  
 6 can't ask him what he's talked  
 7 about with you, but I can ask  
 8 him what he's reviewed.  
 9 MR. NIX: Object to the form. You  
 10 can answer.  
 11 A. Court documents.  
 12 Q. Court documents being?  
 13 A. Materials, interrogatories, things that  
 14 you've generated that were shared with me.  
 15 MR. NIX: If you reviewed them  
 16 with me, I don't think you  
 17 have to say.  
 18 Q. I'm not asking about any discussions you  
 19 had with your lawyer. I'm just asking  
 20 about what you looked at.  
 21 A. The only things -- I don't have time to --  
 22 The only things that I have looked at would  
 23 have been those documents that I have

Page 49

1 reviewed with my attorney.  
 2 Q. And that would be court documents? Is that  
 3 your testimony?  
 4 A. Well, about -- Yes. Documents that were  
 5 generated as a result of this action.  
 6 Q. Do you have somewhere you have to be today  
 7 after this deposition?  
 8 A. Tuscaloosa.  
 9 Q. What time do you have to be in Tuscaloosa?  
 10 A. Not a set time. But I'll be headed there  
 11 shortly after this.  
 12 Q. Do you live in Tuscaloosa?  
 13 A. No. I live in this area.  
 14 Q. What is your address?  
 15 A. 7320 Coosada Road, Coosada, Alabama.  
 16 Q. How long have you lived at that address?  
 17 A. Since 1995, April of 1995.  
 18 Q. And where did you live before then?  
 19 A. Here in Montgomery.  
 20 Q. What part of town?  
 21 A. Green Acres, not too far from here.  
 22 Q. Are you married, Commissioner Houston?  
 23 A. Yes.

Deposition of John M. Houston

June 26, 2008

Page 50

1 Q. What is your wife's name?  
 2 A. Rita.  
 3 Q. Rita Houston?  
 4 A. Correct.  
 5 Q. Does she go by any other names?  
 6 A. No.  
 7 Q. What's her maiden name?  
 8 A. Rita Gonzalez.  
 9 Q. Do you have any adult family members --  
 10 when I say adult, I mean age 18 or older --  
 11 residing here in Montgomery or the central  
 12 Alabama area?  
 13 A. My daughter is 20. She's home this summer  
 14 from college. Just completed her sophomore  
 15 year.  
 16 Q. Where does she attend college?  
 17 A. Auburn.  
 18 Q. But Montgomery or Coosada is her home?  
 19 A. Yes.  
 20 Q. What is your daughter's name?  
 21 A. Lauren.  
 22 Q. Lauren Houston?  
 23 A. Correct.

Page 51

1 Q. Any other children?  
 2 A. I have a son, John Preston, who is 15.  
 3 Q. Where does he go to school?  
 4 A. Catholic High.  
 5 Q. Here in Montgomery?  
 6 A. Yes.  
 7 Q. Any other children?  
 8 A. No.  
 9 Q. Any other family members in Montgomery or  
 10 the central Alabama area?  
 11 A. Yes.  
 12 Q. Can you tell me who they are?  
 13 A. I have two brothers, Frank and Rob, both of  
 14 whom live in Coosada. And my mother, who  
 15 is in a nursing home. She will be 90 in  
 16 July.  
 17 Q. What nursing home is your mother in?  
 18 A. Sunbridge in Elmore.  
 19 Q. What is your mother's name?  
 20 A. Matilda, Matilda Houston.  
 21 Q. And your brothers Frank and Rob, would that  
 22 be Frank Houston and Rob Houston?  
 23 A. Correct.

Page 52

1 Q. What, by the way, does your wife Rita do  
 2 for a living?  
 3 A. She works with the Department of  
 4 Rehabilitation Services.  
 5 Q. In what capacity?  
 6 A. She's a supervisor of state services for  
 7 the blind.  
 8 Q. Is her office here in Montgomery?  
 9 A. Yes.  
 10 Q. What does your brother Frank do for a  
 11 living?  
 12 A. He's retired.  
 13 Q. Where is he retired from?  
 14 A. Alfa.  
 15 Q. What did he do with Alfa?  
 16 A. He was vice president over different areas  
 17 at different times. I don't know exactly  
 18 from which he retired.  
 19 Q. So he is not employed currently?  
 20 A. He's the mayor of Coosada. He gets a  
 21 hundred dollars a year, I believe.  
 22 Q. Has your brother Frank held any other  
 23 elected or government positions besides

Page 53

1 being mayor of Coosada?  
 2 A. No.  
 3 Q. And how long has he been mayor?  
 4 A. Oh, gosh. I'm not sure. 20 years.  
 5 MR. MOZINGO: Off the record.  
 6 (Off-the-record discussion.)  
 7 Q. When your brother worked for Alfa, you told  
 8 me he was vice president. Was he vice  
 9 president of any particular division or the  
 10 office at Alfa?  
 11 A. He was, but he moved around at different  
 12 times. At one point it was over data  
 13 processing and another there were other  
 14 areas he would be in. He moved around and  
 15 was responsible for different areas at  
 16 different times.  
 17 Q. What is Frank's wife's name?  
 18 A. Mit.  
 19 Q. M-I-T-T?  
 20 A. M-I-T.  
 21 Q. Is that a nickname?  
 22 A. I believe she preferred that to Mildred.  
 23 Q. Does Mildred work anywhere?



Deposition of John M. Houston

June 26, 2008

Page 54

1 A. No.  
 2 Q. Has she worked anywhere?  
 3 A. Not recently.  
 4 Q. Where did she work?  
 5 A. She worked as a real estate agent at a time  
 6 and also worked in an insurance office.  
 7 It's been a while. I don't remember how  
 8 long it's been.  
 9 Q. She goes by Mildred Houston?  
 10 A. Mit Houston.  
 11 Q. I'm sorry. Mit Houston?  
 12 A. Uh-huh (positive response).  
 13 Q. And your brother Rob Houston, what does he  
 14 do?  
 15 A. He's retired.  
 16 Q. Where did he retire from?  
 17 A. Regions Bank.  
 18 Q. What did he do with Regions?  
 19 A. He was the financial vice president and  
 20 comptroller for the bank corporation.  
 21 Q. When did he retire?  
 22 A. I'm not certain exactly, but approximately  
 23 five years ago.

Page 55

1 Q. Is Rob married?  
 2 A. Yes.  
 3 Q. What is his wife's name?  
 4 A. Kate.  
 5 Q. Kate Houston?  
 6 A. Yes.  
 7 Q. What does she do for a living?  
 8 A. She's a homemaker.  
 9 Q. That means she works harder than anyone  
 10 else.  
 11 A. Her kids are grown. So it's a little bit  
 12 different, I guess.  
 13 Q. Has she always been a homemaker?  
 14 A. Yes. She has worked as a teacher's aide at  
 15 times. But to my knowledge that's the only  
 16 thing that she's done other than as a  
 17 homemaker.  
 18 Q. And when she's worked as a teacher aide,  
 19 what school system has that been with?  
 20 A. Montgomery city.  
 21 Q. Now, do either Frank or Rob have any adult  
 22 children living in Montgomery or the area?  
 23 A. Frank does.

Page 56

1 Q. What are the names of those children?  
 2 A. Jim and Steve.  
 3 Q. Jim Houston?  
 4 A. Right.  
 5 Q. And Steve Houston?  
 6 A. Right.  
 7 Q. What does Jim do?  
 8 A. I'm not sure. Both of them have  
 9 backgrounds in information technology, but  
 10 I don't know where their place of  
 11 employment would be.  
 12 Q. You don't know where either work?  
 13 A. No.  
 14 Q. Do you know if they're married?  
 15 A. Both are married.  
 16 Q. Do you know their wives' names?  
 17 A. Donna is Jim's wife and Sandy is Steve's  
 18 wife.  
 19 Q. Do you know where they work?  
 20 A. No.  
 21 Q. Any other family members living here --  
 22 adult family members we haven't covered?  
 23 A. No. Other than my mother. We covered

Page 57

1 her. But, no, not any others.  
 2 Q. When I was asking you earlier about your  
 3 emphasis as commissioner, one of the things  
 4 you told me was about your management  
 5 style. Any particular areas or any other  
 6 particular -- do you have any other  
 7 particular emphasis other than the  
 8 management style you told me about?  
 9 A. Well, I think when you were asking me  
 10 about -- I don't recall specifically -- but  
 11 earlier those questions and I responded  
 12 about -- now I can't even remember what it  
 13 was. But that's how we got into management  
 14 style. As far as particular areas of  
 15 interest, children's services, the planning  
 16 process as it relates to service  
 17 development across the state, the  
 18 participation of consumer and family  
 19 representation at all stages in  
 20 departmental planning, the development of  
 21 information technology and its application  
 22 across the department, the development of  
 23 more outcome based programming and



Deposition of John M. Houston

June 26, 2008

Page 58

1 allocation of resources. That would be the  
 2 high spots.  
 3 Q. Commissioner Houston, was Marilyn Benson  
 4 preselected for the job of Assistant  
 5 Departmental Personnel Manager?  
 6 A. No.  
 7 Q. Is it your practice or policy to preselect  
 8 employees for available exempt positions?  
 9 A. No.  
 10 Q. Was the position of Departmental Assistant  
 11 Personnel Manager created for Marilyn  
 12 Benson?  
 13 A. No.  
 14 Q. Was it created for anybody in particular?  
 15 A. No.  
 16 (Plaintiffs' Exhibit 83 was marked  
 17 for identification.)  
 18 Q. Let me show you what I have marked  
 19 Plaintiffs' Exhibit 83. And, again, I'll  
 20 represent to you that is Code sections that  
 21 I have downloaded from the Alabama  
 22 Administrative Code as it pertains to the  
 23 Alabama Department of Mental Health.

Page 59

1 MR. NIX: Let me take a look at  
 2 it, please.  
 3 Q. While your attorney is looking at that, let  
 4 me go ahead and ask you this question. Why  
 5 was the position of Departmental Assistant  
 6 Personnel Manager created?  
 7 A. It was suggested to me that when the then  
 8 director, Henry Ervin, was involved in  
 9 other matters around the state or absent  
 10 for periods of time that there was not  
 11 anyone assigned specific responsibility  
 12 over that area and that there was a need to  
 13 have someone with that specific  
 14 responsibility. Subsequently it was  
 15 suggested that that person would have some  
 16 significant responsibility in a wage and  
 17 class study that was to be conducted that  
 18 was needed. And those were the primary  
 19 reasons why it was created.  
 20 Q. So what I wrote down was primary reasons.  
 21 I have two. So someone would be assigned  
 22 specific responsibility of being over that  
 23 area --

Page 60

1 A. In the absence of the director.  
 2 Q. -- in Mr. Ervin's absence? And the  
 3 director is Mr. Ervin?  
 4 A. Right.  
 5 Q. Henry Ervin?  
 6 A. Right.  
 7 Q. And then someone would be responsible for  
 8 the wage and class study?  
 9 A. Well, this would be a major project and  
 10 that this person would also have a large  
 11 role in that project.  
 12 Q. Any other reasons?  
 13 A. For the creation of that position?  
 14 Q. Yes, sir.  
 15 A. Not specifically, no.  
 16 Q. Could those assignments have been delegated  
 17 to an individual without creating a new  
 18 position?  
 19 A. Possibly.  
 20 Q. Did you consider that?  
 21 A. I don't recall that specifically.  
 22 Q. Did you consider whether anyone was already  
 23 performing those assignments prior to

Page 61

1 creating this position?  
 2 A. Performing a supervisory function?  
 3 Q. Performing the assignment of being  
 4 responsible for the department in the  
 5 absence of Mr. Ervin.  
 6 A. I apologize, but back up and ask me the  
 7 question again.  
 8 Q. Prior to approving the creation of that  
 9 position, did you consider or inquire  
 10 whether someone was already performing the  
 11 assignment of being available or  
 12 responsible for the department in the  
 13 absence of Mr. Ervin?  
 14 A. No.  
 15 Q. You never inquired?  
 16 A. Well, if part of the rationale is that  
 17 there's no one in that capacity or having  
 18 that responsibility and authority, then  
 19 that suggests to me that there's no one  
 20 doing that.  
 21 Q. Have you ever taken a look at Marilyn  
 22 Benson's employment evaluations?  
 23 A. I believe that I have, but I can't tell

Deposition of John M. Houston

June 26, 2008

Page 62

1 you. I'll sign off on -- as a reviewer of  
2 evaluations and I do a number of those. I  
3 don't believe that I would have done so  
4 with Marilyn on a routine basis. There may  
5 have been some occasions when the person  
6 conducting the evaluation was reporting  
7 directly to me that I would have. Those  
8 would have been interim periods. I don't  
9 recall specifically doing so.

10 Q. Is it possible that you would have reviewed  
11 her employment evaluation or one of her  
12 employment evaluations for the period  
13 involving the year 2002?

14 A. It's possible.

15 Q. And is it possible that you would have  
16 reviewed one of her employment evaluations  
17 for the period involving the year 2003?

18 A. It's possible.

19 Q. And would it also be possible -- the same  
20 be possible for the period involving the  
21 year 2004?

22 A. It is possible.

23 Q. And I suppose it would also be possible of

Page 63

1 the same for the year 2005?

2 A. It is possible. I have no specific  
3 recollection of any of those occasions.

4 Q. Would you routinely look at Marilyn  
5 Benson's employment evaluation?

6 A. No.

7 MR. TARVER: I'm sorry. I didn't  
8 hear that answer.

9 MR. MOZINGO: No.

10 Q. Would you ever sign off on Marilyn Benson's  
11 employment evaluations?

12 A. Typically the direct supervisor would  
13 conduct the evaluation and their  
14 supervisor, which in this case would have  
15 been the associate commissioner, would sign  
16 off as reviewer and I would not see it. On  
17 occasions when the associate commissioner  
18 was -- that position was not filled or as  
19 an interim basis or some circumstance that  
20 one of those individuals was not there and  
21 there needed to be someone to do that  
22 review, then I may have. But I have no  
23 particular recollection of any specific

Page 64

1 occasion of doing it.

2 Q. And I use the word employment evaluation.  
3 How about preappraisal? I think it can be  
4 confusing sometimes because a preappraisal  
5 is used in the employment evaluation. But  
6 when I use the word employment evaluation,  
7 would that also -- or could that also  
8 include Marilyn Benson's preappraisals?

9 A. Well, it could. I think probably  
10 performance appraisal may be the term.

11 Q. Okay. And thank you. And I do want to use  
12 the correct term. And I imagine you'd  
13 certainly know the term better than I  
14 would. And so I'll reask my question just  
15 because I want to make sure I use the  
16 correct term. I don't want there to be any  
17 confusion or ambiguity. But it's  
18 possible -- I better write it down.  
19 Employment appraisal?

20 A. Performance appraisal.

21 Q. Performance appraisal. And so it's  
22 possible that you would have reviewed  
23 Marilyn Benson's performance appraisal for

Page 65

1 the year 2002?

2 A. It is possible.

3 Q. And it's possible you would have reviewed  
4 her performance appraisal for the year  
5 2003?

6 A. It is possible.

7 Q. And the year 2004?

8 A. It is possible.

9 Q. And the year 2005?

10 A. It is possible.

11 Q. Is it possible that you reviewed the  
12 performance appraisal for Joan Owens for  
13 those same years?

14 A. I don't think so. You know, when you  
15 present things in is it possible and -- I  
16 consider a great many things as possible,  
17 though extremely unlikely. So I would say  
18 it would be extremely unlikely.

19 Q. That you reviewed Joan Owens'?

20 A. Correct.

21 Q. And would it likewise be extremely unlikely  
22 that you reviewed Lynn Hubbard's  
23 performance appraisals for any years 2002

Deposition of John M. Houston

June 26, 2008

Page 66

1 through 2005?  
 2 A. Yes.  
 3 Q. Going back to Plaintiffs' Exhibit 83. This  
 4 is the Administrative Code section for the  
 5 Department of Mental Health concerning  
 6 nonmerit positions. Would that be correct?  
 7 A. It appears to be.  
 8 Q. And the position of Departmental Assistant  
 9 Personnel Manager is a nonmerit position;  
 10 correct?  
 11 A. I believe that's correct.  
 12 Q. And it is -- that is different from an  
 13 appointed position; correct?  
 14 MR. NIX: I'm sorry. Would you  
 15 say that again?  
 16 Q. A nonmerit or nonexempt position is  
 17 different from an appointed position?  
 18 MR. NIX: I object to the form.  
 19 Q. Or not?  
 20 A. An appointed position, such as executive  
 21 assistant to the commissioner, may also be  
 22 an exempt position.  
 23 Q. Okay. Very good. Very good point. Is the

Page 67

1 position of Departmental Assistant  
 2 Personnel Manager an appointed position?  
 3 A. You mean noncompetitive? I'm not sure what  
 4 you mean by that, because all positions are  
 5 appointed in one sense.  
 6 Q. Okay. Well, I certainly want us to be  
 7 talking about apples and apples and oranges  
 8 and oranges. So when you say  
 9 noncompetitive, what are you referring to?  
 10 A. Such as the associate commissioner saying I  
 11 want this person in that position and I'm  
 12 appointing them to that position.  
 13 Q. And the associate commissioner is a  
 14 position that can be appointed; correct?  
 15 A. That's correct.  
 16 Q. And you don't have to have open competition  
 17 for that position, do you?  
 18 A. That's correct.  
 19 Q. I mean, you can preselect for that  
 20 position?  
 21 A. That's correct.  
 22 MR. NIX: Which position are you  
 23 talking about?

Page 68

1 MR. MOZINGO: Associate  
 2 commissioner.  
 3 Q. Just like the governor can preselect his  
 4 appointee for the position of commissioner?  
 5 MR. NIX: Let me just object to  
 6 the term preselect in that I  
 7 think it gets really vague and  
 8 ambiguous when you use it in  
 9 different ways and I think in  
 10 a sense it's ambiguous.  
 11 A. I think the term that is frequently used is  
 12 serve at the pleasure of.  
 13 Q. The position of Departmental Assistant  
 14 Personnel Manager in central personnel, is  
 15 that a position where the employee would  
 16 serve at the pleasure of the personnel  
 17 manager?  
 18 A. In the sense that we used that, no.  
 19 Q. And in the sense that we are using it --  
 20 because I think you and I are talking about  
 21 the same thing -- you have to have open  
 22 competition for that position; correct?  
 23 A. That's how it was handled, yes.

Page 69

1 Q. And open competition means that you would  
 2 publish a notice of the job opening?  
 3 A. Yes.  
 4 Q. And you would give individuals an  
 5 opportunity to apply for that job opening?  
 6 A. Yes.  
 7 Q. And applicants would be interviewed by a  
 8 panel for that job opening?  
 9 A. Typically, but not always.  
 10 Q. But applicants would be interviewed for  
 11 that job opening?  
 12 A. Yes.  
 13 Q. And an applicant would be hired from that  
 14 interview process?  
 15 A. Typically, but not always.  
 16 Q. And that is unlike the position of either  
 17 commissioner or associate commissioner in  
 18 that the -- well, in the case of associate  
 19 commissioner, you don't have to accept  
 20 applications. You can already have  
 21 somebody in mind and appoint them to that  
 22 position; correct?  
 23 A. That's correct.

Deposition of John M. Houston

June 26, 2008

Page 70

1 Q. And they don't have to have open and fair  
2 competition for that position, do they?  
3 A. That is correct.  
4 Q. Just like the position of commissioner of  
5 mental health, the governor is not  
6 obligated to have open and fair competition  
7 for that position, is he?  
8 A. That's correct. And, again, I would refer  
9 to the term serve at the pleasure of.  
10 Q. Correct. Which means the governor can pick  
11 whoever he wants?  
12 A. And can remove them.  
13 Q. Exactly.  
14 Section 580-6-36-.02 states that the  
15 Department of Mental Health and Mental  
16 Retardation shall establish and promulgate  
17 guidelines governing the selection of  
18 exempt employees. Do you see that  
19 sentence?  
20 A. Yes.  
21 Q. Is that true?  
22 MR. NIX: Is what true?  
23 MR. MOZINGO: That the Department

Page 71

1 of Mental Health is required  
2 to establish and promulgate  
3 guidelines governing the  
4 selection of exempt employees.  
5 A. The department shall establish and  
6 promulgate such guidelines, yes.  
7 Q. And has the department established and  
8 promulgated such guidelines?  
9 A. Yes.  
10 Q. If you'll look down at Section  
11 580-6-36-.03. Again, it's on the same page  
12 we were just referring to. It refers to  
13 recruitment of personnel for exempt  
14 positions. And the last sentence states,  
15 such efforts shall be consistent with the  
16 DMH backslash MR affirmative action plan,  
17 especially as it relates to minority  
18 employment goals. Do you see that  
19 sentence?  
20 A. Yes.  
21 Q. Does the Alabama Department of Mental  
22 Health have an affirmative action plan?  
23 A. I believe it does. I don't recall seeing

Page 72

1 that anytime recently.  
2 Q. Do you know what the plan is?  
3 A. No.  
4 Q. Do you know of any objectives of the plan?  
5 A. I have not reviewed that anytime recently  
6 and I couldn't tell you the specifics of  
7 it.  
8 Q. When is the last time you reviewed the  
9 plan?  
10 A. I don't know.  
11 Q. Does the Department of Mental Health have  
12 minority employment goals?  
13 A. I keep up with the employment data  
14 regarding hiring of race, sex, this sort of  
15 thing. And I would think we would exceed  
16 almost anything in state government.  
17 Q. So you do keep up with the hiring of  
18 minority individuals?  
19 A. I receive reports periodically regarding  
20 the staffing, current staffing and the  
21 hiring practices regarding race and sex,  
22 for example.  
23 Q. Are those reports generated at your

Page 73

1 request?  
2 A. They've always -- It's been routine. I  
3 didn't request them, but they had been  
4 generated routinely.  
5 Q. And who generates them?  
6 A. I suspect a combination of personnel and  
7 the IT folks, information technology folks.  
8 Q. Is it your testimony, then, that those  
9 reports were being generated before you  
10 became acting commissioner?  
11 A. That's correct.  
12 Q. Have you at any time ordered that the  
13 generation of such reports cease?  
14 A. No.  
15 Q. Do you review the reports when you get  
16 them?  
17 A. Periodically. I don't always, but  
18 periodically.  
19 Q. And it's your testimony that the Alabama  
20 Department of Mental Health exceeds other  
21 state agencies in minority employment?  
22 A. That is my belief.  
23 Q. And does it exceed other state agencies in



Page 74

1 minority employment by the number of  
2 minority employed?

3 MR. MOZINGO: And I may have asked  
4 that sentence in a --

5 MR. NIX: I'm not sure I  
6 understand the question. I'm  
7 sorry.

8 MR. MOZINGO: I think I mangled  
9 some of my words.

10 Q. Does it exceed other state agencies -- when  
11 I say it, I'm referring to the Department  
12 of Mental Health. Does it exceed other  
13 state agencies by the minority of employees  
14 employed?

15 A. I don't know the answer to that. There are  
16 a couple of agencies that have a larger  
17 number of employees than we do, so I don't  
18 know how that would relate. I think that  
19 we would -- as far as number of --  
20 percentage of minority employees and I  
21 would think that we would be at or near the  
22 top. I don't know that we would be at the  
23 top, but we would be at or near the top.

Page 75

1 Q. And at or near the top could be by the  
2 number of minorities employed?

3 A. (Witness nods head).

4 Q. Is that correct?

5 A. Yes.

6 Q. And could it be also by the number of  
7 minorities as a percentage of the number of  
8 overall employees?

9 A. That's correct.

10 Q. Could it be by the number of minorities in  
11 management positions?

12 A. Yes.

13 Q. Could it exceed other state agencies in any  
14 other way concerning minority employment?

15 A. In any other way? I wouldn't know how  
16 to -- what other comparisons. You'd have  
17 to be specific, and I don't know. I can't  
18 think of any offhand.

19 Q. And does it exceed other state agencies in  
20 minority employment through conscientious  
21 employment efforts?

22 MR. NIX: What do you mean by  
23 that? Can you define what you

Page 76

1 mean by conscientious  
2 employment efforts? I object  
3 to the form.

4 Q. Do you understand my question?

5 A. What do you mean by conscientious  
6 employment efforts?

7 Q. Well, is there any affirmative action plan  
8 that's been implemented whereby the  
9 Department of Mental Health has been able  
10 to exceed other state agencies in minority  
11 employment?

12 A. There have been in the past. I'm not aware  
13 of one currently in place.

14 Q. Was the position of Departmental Assistant  
15 Personnel Manager created in order to place  
16 a minority in that position?

17 A. No.

18 Q. Was the position of Departmental Assistant  
19 Personnel Manager created for a minority?

20 A. No.

21 Q. Let me have you look at the next page,  
22 Commissioner Houston. Section 580-6-36-.04  
23 states the department shall conduct all

Page 77

1 personnel activities without regard to  
2 race, religion, national origin, color,  
3 age, sex or disability. Did I read that  
4 correctly?

5 A. Correct.

6 Q. Is that a true and correct policy of the  
7 Department of Mental Health?

8 A. It absolutely is my policy and is, to the  
9 best of my knowledge, the policy and  
10 practice of the department.

11 Q. Was it the policy and practice of the  
12 department in 2004?

13 A. Yes.

14 Q. In 2005?

15 A. Yes.

16 Q. And in 2006?

17 A. Yes.

18 Q. Do you know of any examples of a violation  
19 of such policy and practice?

20 A. No, I do not.

21 Q. Do you believe you have ever violated a  
22 policy and practice in any employment  
23 decisions that you have made?



Page 78	Page 80
<p>1 A. I have not.</p> <p>2 Q. Commissioner Houston, how is the Department</p> <p>3 of Mental Health able to carry out the</p> <p>4 policy and practice set forth in Section</p> <p>5 580-6-36-.04 while simultaneously</p> <p>6 implementing an affirmative action plan as</p> <p>7 set forth in Section 580-6-36-.03?</p> <p>8 MR. NIX: Can I take a look at the</p> <p>9 sections? Will you say them</p> <p>10 again?</p> <p>11 MR. MOZINGO: I just read them out</p> <p>12 loud.</p> <p>13 MR. NIX: I know you did. I</p> <p>14 wasn't following you. Would</p> <p>15 you read them out loud again?</p> <p>16 MR. MOZINGO: Yeah.</p> <p>17 Q. How is the department able to carry out the</p> <p>18 policy and practice set forth in Section</p> <p>19 580-6-36-.04 while simultaneously</p> <p>20 implementing an affirmative action plan?</p> <p>21 A. We are very sensitive to the issues of</p> <p>22 discrimination in all regards, and it is</p> <p>23 common practice that we would consider</p>	<p>1 include, for example, making a special</p> <p>2 effort to notify traditional black</p> <p>3 colleges, historically black colleges of</p> <p>4 openings that may come up in particular</p> <p>5 areas, which would be an affirmative action</p> <p>6 step. So basically that should result in</p> <p>7 an increase of minority applicants. The</p> <p>8 interview, review, employment is a separate</p> <p>9 matter and would be done in a</p> <p>10 nondiscriminatory way.</p> <p>11 Q. Does the Department of Mental Health make a</p> <p>12 special effort to hire black employees?</p> <p>13 MR. NIX: I think he's answered</p> <p>14 that.</p> <p>15 A. We make a special effort to recruit in some</p> <p>16 areas in all directions of every race and</p> <p>17 every regard. Other than at times I'm</p> <p>18 aware that we have, as I mentioned earlier,</p> <p>19 made it a point to contact historically</p> <p>20 black colleges. I just use that as an</p> <p>21 example. But other than something like</p> <p>22 that, I'm not aware that there has been any</p> <p>23 initiative of that type.</p>
Page 79	Page 81
<p>1 those practices as far as interview,</p> <p>2 hiring, application, all those sort of</p> <p>3 things and to do so in a nondiscriminatory</p> <p>4 manner. Now, in reference to an</p> <p>5 affirmative action plan, I don't know the</p> <p>6 answer to that.</p> <p>7 Q. So you don't know how it's able to conduct</p> <p>8 personnel activities without regard to</p> <p>9 race, religion, national origin, color,</p> <p>10 age, sex or disability while simultaneously</p> <p>11 carrying out an affirmative action plan?</p> <p>12 MR. NIX: Let me object to the</p> <p>13 form of the question and just</p> <p>14 say that I think his testimony</p> <p>15 is that he has not reviewed</p> <p>16 the affirmative action plan in</p> <p>17 a long time. I think without</p> <p>18 reviewing the plan it would be</p> <p>19 extremely difficult for him to</p> <p>20 answer that and I object to</p> <p>21 the form of the question.</p> <p>22 Q. Can you answer that question?</p> <p>23 A. The affirmative action practices may</p>	<p>1 Q. Has there been a special effort within the</p> <p>2 Department of Mental Health to hire black</p> <p>3 employees in management positions?</p> <p>4 A. Not in my tenure, no.</p> <p>5 Q. Has the Department of Mental Health ever</p> <p>6 utilized the substitution of experience for</p> <p>7 education clause in an effort to hire or</p> <p>8 promote black employees?</p> <p>9 MR. NIX: You're asking the</p> <p>10 substitution clause for the</p> <p>11 purpose of hiring --</p> <p>12 MR. MOZINGO: Hiring or promoting</p> <p>13 black employees.</p> <p>14 A. I have no personal knowledge of that.</p> <p>15 Q. If you'll look at Section 580-6-36-.05</p> <p>16 where it says exempt selection. I'm going</p> <p>17 to read the first sentence. The Department</p> <p>18 of Mental Health, Mental Retardation will</p> <p>19 employ individuals to exempt positions only</p> <p>20 through an open and competitive process.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Is that the policy and practice of the</p>

Deposition of John M. Houston

June 26, 2008

Page 82

1 Alabama Department of Mental Health?

2 A. It is the common practice of the Department

3 of Mental Health. As I had indicated

4 earlier, there may be exceptions to that.

5 And I mentioned the executive assistant to

6 the commissioner, for example, is one of

7 those.

8 Q. Can the position of associate commissioner

9 be filled either by specific selection or

10 through open and competitive process?

11 A. It's at the discretion of the commissioner.

12 Q. When filling the position of associate

13 commissioner -- Strike that. Let me back

14 up and help you out there. In your tenure

15 as the commissioner of the Alabama

16 Department of Mental Health, have associate

17 commissioner positions been filled through

18 open and competitive process?

19 A. No. I have made direct appointments.

20 Q. And Mr. Bennett is one of your

21 appointments?

22 A. That's correct.

23 Q. What is Mr. Bennett's full name?

Page 83

1 A. David Bennett.

2 Q. Is it true that Mr. Bennett's predecessor

3 was employed through an open and

4 competitive process?

5 A. I don't recall. I don't think that he was,

6 but I'm not -- I did not make that

7 appointment, so I'm not sure.

8 Q. And his predecessor was Otha Dillihay;

9 correct?

10 A. Mr. Bennett's was, yes.

11 Q. Otha Dillihay is a black individual?

12 A. That's correct.

13 Q. And you have appointed his predecessor,

14 that being David Bennett, who is also --

15 A. His successor.

16 Q. I'm sorry. His successor. Thank you.

17 Who is also a black individual?

18 A. That's correct.

19 Q. Was the job of Assistant Department

20 Personnel Manager filled through open and

21 competitive process?

22 A. The assistant personnel manager, yes.

23 Q. That being the position held by Marilyn

Page 84

1 Benson?

2 A. That's correct.

3 Q. Was that job created to be filled by open

4 and competitive process?

5 A. That was always the understanding that I

6 had.

7 Q. Were the qualifications for that job

8 designed to ensure an open and competitive

9 process?

10 A. Yes.

11 Q. Were the qualifications for that position

12 designed to encourage the receipt of a

13 maximum number of applications?

14 A. No.

15 Q. Why not?

16 A. I don't design any position for the purpose

17 of ensuring a maximum number of

18 applications. That's a consideration. If

19 you did that, then you'd just lower the

20 standards across the board and you'd have

21 all sorts of applicants. That's not the

22 purpose of -- nor the objective of the

23 overall process.

Page 85

1 Q. Is that why the substitution clause was

2 left out of the qualifications for the

3 department --

4 A. No.

5 Q. -- Departmental Assistant Personnel

6 Manager?

7 A. That's totally unrelated.

8 Q. How are they unrelated?

9 A. Well, it's unrelated because it wasn't

10 designed for the purpose of ensuring the

11 maximum number of applicants.

12 Q. What were the qualifications designed for?

13 A. To assure that we had a qualified person in

14 that position, hopefully the most qualified

15 person, and someone who could adequately

16 function in the absence of the director --

17 as a supervisory person in absence of the

18 director.

19 Q. Do you believe that Marilyn Benson is the

20 most qualified person for that job?

21 A. The most --

22 MR. NIX: Excuse me. Let me

23 object to the form. Are you

Deposition of John M. Houston

June 26, 2008

Page 86

1 confining that to the  
2 applicants, or are you saying  
3 in the universe -- in the  
4 entire universe?  
5 A. That was my question. That was going to be  
6 my question. I mean, everybody in the  
7 universe or just those that applied?  
8 Q. Well, do you believe that she was the most  
9 qualified applicant of those that applied?  
10 A. Yes.  
11 Q. Do you believe that she was the most -- Do  
12 you believe out of all of the employees in  
13 the central personnel office that she was  
14 the most qualified for that position?  
15 MR. NIX: I'm sorry. I  
16 apologize. I was reading  
17 something when you said that.  
18 MR. MOZINGO: Well, good. Because  
19 I need to fix it.  
20 Q. Excluding Mr. Ervin, do you believe that  
21 Marilyn Benson was the most qualified  
22 employee in the central personnel office  
23 for that position?

Page 87

1 A. Of those that applied?  
2 Q. No, no. I've already asked you that  
3 question. You gave me an answer. This is  
4 a different question.  
5 A. There are 200 people in the central  
6 office. I wouldn't be able to tell you.  
7 Q. No. I said central personnel office.  
8 A. Then yes.  
9 Q. There was a lot of talking there. Let me  
10 reask the question and make sure it's  
11 clear. Of all the employees in the central  
12 personnel office, excluding Henry Ervin, do  
13 you believe that Marilyn Benson was the  
14 most qualified applicant for the position  
15 of Assistant Department Personnel Manager?  
16 A. Yes.  
17 Q. Why?  
18 A. Why?  
19 Q. Yes, sir.  
20 A. We went through an open and competitive  
21 process. We advertised and readvertised.  
22 We had outside panelists who were  
23 unassociated with the department involved

Page 88

1 with the evaluation -- the interview and  
2 evaluation. The criteria were developed in  
3 consideration -- and qualifications  
4 developed in consideration of that. And  
5 altogether I think that resulted in the  
6 best qualified applicant among those that  
7 applied or those within that personnel  
8 section.  
9 Q. Isn't it true that only blacks were  
10 interviewed for that position?  
11 A. I don't know the answer to that.  
12 Q. Have you ever looked at the record to see?  
13 A. No.  
14 Q. Would it surprise you that only blacks were  
15 interviewed?  
16 A. It hasn't occurred to me.  
17 Q. Well, would it surprise you that only  
18 blacks were interviewed?  
19 MR. NIX: I object to the form.  
20 He said he hasn't even thought  
21 about it.  
22 Q. I'm telling you now. Does it surprise you  
23 that only blacks were interviewed?

Page 89

1 MR. NIX: I object to the form of  
2 the question. It's not based  
3 on a hypothetical. It's --  
4 A. It is new to me, but it would not surprise  
5 me.  
6 Q. Why not?  
7 A. Very little surprises me after 30 years in  
8 this field. We have a lot of minority  
9 applicants. It wouldn't surprise me that  
10 in one position or another that there may  
11 be all white or all black or the  
12 interviews, you know, one or the other. We  
13 conduct so many of these that on occasion  
14 that may be the case. It wouldn't surprise  
15 me that occasion of that would occur.  
16 Q. Did you, Commissioner Houston, or anyone  
17 working under you utilize outside -- an  
18 outside panelist in developing the  
19 specifications for the position of  
20 Departmental Assistant Personnel Manager?  
21 A. I did not. I don't know if someone from  
22 outside was involved in developing the  
23 qualifications. I don't know the answer to

Deposition of John M. Houston

June 26, 2008

Page 90

1 that.  
 2 Q. But you didn't?  
 3 A. I did not personally.  
 4 MR. NIX: I'm sorry. When you get  
 5 to a point.  
 6 MR. MOZINGO: I'm close.  
 7 Q. But you could have; correct?  
 8 A. Could have.  
 9 Q. So why didn't you?  
 10 A. Why did I not personally?  
 11 Q. Yes, sir.  
 12 A. We employ about 2,800 people. I typically  
 13 would not be involved in development of the  
 14 qualifications or criteria other than those  
 15 positions that would directly report to me  
 16 typically. I believe that state  
 17 personnel -- someone from state personnel  
 18 was consulted in that, but I do not know  
 19 that.  
 20 Q. The position of Departmental Assistant  
 21 Personnel Manager does not report directly  
 22 to you; correct?  
 23 A. Correct.

Page 91

1 MR. MOZINGO: Let's take a break.  
 2 (Brief recess was taken.)  
 3 Q. You told me earlier today that the  
 4 Department of Mental Health meets or  
 5 exceeds -- I think you primarily said  
 6 exceeds other state agencies in the number  
 7 of minorities employed. Do you remember  
 8 that? I'm paraphrasing, but do you  
 9 remember that testimony?  
 10 A. Basically, yeah.  
 11 Q. Did I paraphrase it correctly?  
 12 A. Well, I think I qualified that to say that  
 13 at one time I think we were the largest  
 14 state agency as far as number of  
 15 employees. We don't have that distinction  
 16 now. So in actual numbers I'm not sure.  
 17 Department of Transportation maybe or some  
 18 others may exceed us. But as far as  
 19 percentage of overall and professional  
 20 staff, it is my belief that we do exceed  
 21 most in the numbers, most if not all in  
 22 percentages.  
 23 Q. As commissioner is that a source of pride

Page 92

1 for you?  
 2 A. I don't know if pride would be the word.  
 3 I'll acknowledge that it's a source of  
 4 pride in the sense that I don't believe  
 5 that we have discriminatory practices.  
 6 That's a source of pride.  
 7 Q. You don't have discriminatory practices at  
 8 least against African-Americans?  
 9 A. I believe against anyone. But that would  
 10 be evidence in that case.  
 11 Q. In what case?  
 12 A. The statistics that I've seen regarding the  
 13 number of African-Americans or percentage  
 14 in numbers would suggest that there's not  
 15 discrimination in that area. But I would  
 16 submit that we are nondiscriminatory across  
 17 the board.  
 18 Q. Commissioner Houston, who is Jim Elliott?  
 19 A. Jim Elliott?  
 20 Q. Yes, sir.  
 21 A. I don't know. Can you refresh my memory?  
 22 Q. Isn't he the personnel manager at Bryce  
 23 Hospital?

Page 93

1 A. I believe so. I've heard Jim's name. I  
 2 don't -- I'm not even sure I've met him.  
 3 I'm not sure.  
 4 Q. So you don't personally know him?  
 5 A. No.  
 6 Q. Did you personally know Marilyn Benson in  
 7 2004?  
 8 A. Yes.  
 9 Q. As personnel manager of Bryce Hospital,  
 10 which you told me is the largest or one of  
 11 the largest mental health facilities in the  
 12 state, does he hold a key position in the  
 13 Department of Mental Health?  
 14 MR. NIX: Who is that now? Jim  
 15 Elliott?  
 16 MR. MOZINGO: Jim Elliott.  
 17 A. He holds a key position at Bryce Hospital.  
 18 Q. In holding a key position at Bryce  
 19 Hospital, would it likewise be a key  
 20 position in the Department of Mental  
 21 Health?  
 22 A. Depends on who you ask. I would think that  
 23 would be a key position.



Deposition of John M. Houston

June 26, 2008

Page 94

1 Q. Who is Christopher Vilamaa?

2 A. Chris Vilamaa. He works within the

3 substance abuse division.

4 Q. What does he do?

5 A. I'm not sure I could tell you entirely. He

6 works a great deal with the data systems,

7 development and implementation of data

8 systems there. I'm not sure what else that

9 he's responsible for.

10 Q. Does he hold a key position in the central

11 office, your office?

12 MR. NIX: I'm not sure I

13 understand. Do you mean the

14 physical location of where the

15 central office is? Is that

16 what you're talking about?

17 A. If you were to ask me to make a list of the

18 key positions, he would not be on it.

19 Q. He would not be on that list; is that

20 correct?

21 A. That's correct.

22 Q. And why not?

23 A. Because the longer you make the list, the

Page 95

1 less that is a key position.

2 Q. Do you know what his job title is?

3 A. No.

4 Q. Do you know what Jim Elliott's job title

5 is?

6 A. No.

7 Q. Do you know what classification Jim Elliott

8 would be in with the Department of Mental

9 Health?

10 A. No.

11 Q. Do you know what classification Christopher

12 Vilamaa would be in?

13 A. No.

14 MR. MOZINGO: For the record I

15 think that's spelled

16 V-I-L-A-M-A-A.

17 Q. Are you familiar with the classification

18 positions utilized by the Department of

19 Mental Health?

20 A. In a general way, yes. Not with everyone.

21 Q. Are you familiar with the classification

22 for -- or classification system for

23 personnel specialists?

Page 96

1 A. No.

2 Q. Are you familiar with the classification

3 system for personnel managers?

4 A. No.

5 Q. Are you familiar with the classification

6 system for administrators?

7 A. Some.

8 Q. What is your knowledge, then, or

9 familiarity with that classification?

10 A. There's an administrator series that goes

11 from, I believe, from I to VI.

12 Administrative I, II, III, IV, V, VI. I

13 know we had discussed adding an

14 Administrator VII. As progressively

15 responsible positions, it's in many

16 respects a generic classification area that

17 could encompass any number of different

18 things.

19 Q. When you were an executive assistant to the

20 associate commissioner, were you part of

21 the classification system?

22 A. I believe I was classified as Administrator

23 VI.

Page 97

1 Q. So then you would be familiar with the

2 administrator series from being a member or

3 holding a position in that series; correct?

4 A. Correct.

5 Q. Have you ever held a position in the

6 personnel manager series?

7 A. No.

8 Q. Have you ever held a position in the

9 personnel specialist series?

10 A. The only positions I've held have been

11 Administrator VI and commissioner.

12 Q. When did you first obtain the Administrator

13 VI classification?

14 A. January 1986.

15 Q. You are ultimately responsible, in your

16 position as commissioner, for the

17 formulation and implementation of the

18 classification system at the Department of

19 Mental Health; correct?

20 A. Correct.

21 Q. Now, Commissioner Houston, we discussed

22 before our break some administrative

23 policies or administrative regulations for



Deposition of John M. Houston

June 26, 2008

Page 98

1 the Department of Mental Health as  
2 reflected, I believe, in front of you  
3 Plaintiffs' Exhibit 81 and Plaintiffs'  
4 Exhibit -- I don't have it there.

5 MR. NIX: 83.

6 Q. 83. Correct?

7 A. They're in front of me.

8 Q. Those administrative regs that we have  
9 discussed earlier -- and I can go through  
10 if you need me to and give their exact  
11 section number. But those administrative  
12 regulations were in effect for the  
13 Department of Mental Health during 2004,  
14 2005 and 2006; correct?

15 A. I believe so.

16 Q. Let me show you what has previously been  
17 marked Plaintiffs' Exhibit 15. And it is  
18 from the policy manual produced to me by  
19 your attorney, the policy manual for the  
20 Department of Mental Health. And I only  
21 have one copy, so I'm going to read from it  
22 first and then hand it to you. But it says  
23 the Alabama Department of Mental Health

Page 99

1 backslash Mental Retardation will recruit,  
2 employ, promote, remunerate and conduct all  
3 personnel administrative practices without  
4 regard to race, religion, national origin,  
5 color, age, gender, disability, et cetera.  
6 Let me hand that to you. Was that the  
7 policy of the Department of Mental Health  
8 in 2004, 2005 and 2006?

9 A. Yes. This indicates there was a change in  
10 '07, and I don't have the former policy in  
11 front of me. But I'm sure that it would be  
12 substantially the same.

13 Q. But it would have been the policy with the  
14 Department of Mental Health in '04, '05 and  
15 '06 to conduct personnel administrative  
16 practices without regard to race?

17 A. Yes.

18 Q. Correct?

19 A. Correct.

20 Q. And let me show you what has previously  
21 been marked Plaintiffs' Exhibit 16. And  
22 the policy itself states, employees of the  
23 Department of Mental Health and Mental

Page 100

1 Retardation will not be subjected to any  
2 form of discrimination or favoritism. Are  
3 you familiar with that policy?

4 A. Yes.

5 Q. In fact, your signature is on that policy;  
6 correct?

7 A. Yes.

8 Q. And your signature is also on the policy  
9 marked Plaintiffs' Exhibit 15; correct?

10 A. It's on all the policies.

11 Q. On all the policies. Okay.

12 A. Or all that have been reviewed since my  
13 appointment at least.

14 Q. And does your signature reflect that you  
15 approved that policy?

16 A. That's correct.

17 Q. And was it also the policy of the  
18 Department of Mental Health in 2004, 2005  
19 and 2006 that employees of the department  
20 would not be subjected to any form of  
21 discrimination or favoritism?

22 A. Correct.

23 Q. If the job of assistant personnel --

Page 101

1 department personnel manager was created  
2 for Marilyn Benson, would that violate any  
3 one of the policies we've just discussed?

4 A. I would think so. That's a hypothetical.  
5 Yes.

6 Q. And if the qualifications and/or  
7 specifications for the job of Assistant  
8 Departmental Personnel Manager were  
9 formulated especially for Marilyn Benson,  
10 that, too, would violate the policies we've  
11 just discussed; correct?

12 A. You know, I'm trying to think if there  
13 would ever be an example of a situation  
14 where we would create a position for a  
15 particular individual, and I suppose there  
16 could be such occasions. I can't think of  
17 any at this point. But if there were a  
18 preconceived notion to bypass the regular  
19 hiring practices to place someone in --  
20 more favorably in that position, then that  
21 would be a violation of this policy.

22 Q. And my clients are alleging -- these are  
23 their allegations -- that the

Page 102

1 qualifications and specifications for the  
2 job held by Marilyn Benson, the  
3 Departmental Assistant Personnel Manager,  
4 were specifically designed for her. Those  
5 are their allegations. Now, if those  
6 allegations were true, would that violate  
7 the policies we've just discussed?

8 MR. NIX: Object to the form.

9 A. Again, there may be occasion where a  
10 position is developed around an  
11 individual. That was not the case here.  
12 Hypothetically, if they were designed for a  
13 particular individual to give them a  
14 competitive edge or with the intent to  
15 bypass or ignore the process, then that  
16 would be a violation of policy.

17 Q. But it is your contention that the  
18 qualifications and specifications for the  
19 job held by Marilyn Benson were not  
20 designed to give her an edge?

21 A. That's correct.

22 Q. That's your contention?

23 A. Yes.

Page 103

1 Q. Did you do anything when the qualifications  
2 and specifications were being formulated to  
3 ensure that they were not designed to give  
4 her an edge?

5 MR. NIX: Object to the form of  
6 the question. And that  
7 assumes he even thought about  
8 it, that there was a  
9 possibility, so I object to  
10 the form. It's a hypothetical  
11 based on facts not in  
12 evidence.

13 A. I wasn't thinking about that. I was  
14 thinking about what we needed in that  
15 position and the process that we would go  
16 through to select an individual. That's  
17 what I was concerned about, not assuring  
18 that a person would have an edge or a  
19 person would not. That was not a  
20 consideration. Only that they -- that  
21 there not be bias in selection and that the  
22 qualifications reflect what was needed in  
23 that position.

Page 104

1 Q. Did you ever ask Henry Ervin, Otha Dillihay  
2 or anyone whether the qualifications and  
3 specifications for the job of Departmental  
4 Assistant Personnel Manager were designed  
5 or developed to give Marilyn Benson or any  
6 employee a competitive advantage?

7 A. No.

8 Q. And it's your testimony that when the  
9 qualifications and specifications for that  
10 position were being developed you never  
11 gave it a thought whether they might --  
12 those qualifications and specifications  
13 might give someone a competitive advantage?

14 MR. NIX: Excuse me. Let me  
15 object to the form of the  
16 question as -- that that's not  
17 his testimony. I think you  
18 asked him specifically about  
19 Marilyn Benson. But so if  
20 you're trying to quote back to  
21 him his testimony to get him  
22 to confirm it, you didn't ask  
23 him that question and that,

Page 105

1 therefore, was not his  
2 testimony.

3 Q. All right. Did you ever ask Henry Ervin,  
4 Otha Dillihay or anyone else whether the  
5 qualifications and specifications for the  
6 job of Assistant Departmental Personnel  
7 Manager were designed or formulated to give  
8 anybody a competitive edge?

9 A. No.

10 Q. And did the thought that -- Strike that.  
11 Did you ever give that question a thought?

12 A. On one occasion Lynn came to speak to me  
13 and raised the possibility that it was  
14 being created with that intent. And I  
15 assured her that the process would be  
16 unbiased and I focused my attention,  
17 whatever attention I gave at that time,  
18 trying to ensure that the qualifications  
19 were appropriate and the process was  
20 nondiscriminatory. I'm comfortable that we  
21 did.

22 Q. And what did you do? You said you focused  
23 your attention. Specifically what did you

Page 106

1 do?

2 A. Tried to make sure that the advertisement

3 of the position -- well, first that the

4 qualifications were appropriate and that

5 the advertisement of the position was cast

6 with a wide net, if you will, that it was

7 statewide, that the panel that would do the

8 interviewing was an objective panel;

9 included people outside the department,

10 people that so far as I knew had no

11 investment in one person or another getting

12 that position. And I'm comfortable that we

13 advertised and readvertised the position

14 broadly, gave if not everyone in the state,

15 everyone in the state system an opportunity

16 to apply, everyone that met those

17 qualifications. I'm comfortable that the

18 panel that conducted the interviews was an

19 objective panel and those are the kinds of

20 things that I addressed.

21 Q. Lynn Hubbard testified -- I'm going to try

22 to paraphrase her testimony -- that she met

23 with you and told you that she thought the

Page 107

1 position that Marilyn Benson currently

2 holds was coming out and that she was

3 concerned that position was being written

4 specifically for Ms. Benson and that that

5 position was being written to bypass her

6 and it was being done on a racial basis.

7 That's what she says she told you or

8 something to that effect.

9 MR. NIX: Are you reading that

10 from her testimony?

11 MR. MOZINGO: Yeah. Would you

12 like for me to read it?

13 MR. NIX: Why don't you read it?

14 MR. MOZINGO: Okay.

15 MR. NIX: What page are you on?

16 MR. MOZINGO: I'm on page 141.

17 Q. She was told -- and I'll give you an

18 opportunity to look at it, but I'm going to

19 read it in first. She was asked about her

20 conversations with you. She says, well, I

21 know that when I met with the commissioner

22 prior to this position being announced, I

23 met with him and discussed that I thought

Page 108

1 such a position was coming out, that I was

2 concerned that they were writing this

3 specifically for Ms. Benson, and that they

4 were bypassing my rights and that it was

5 being done on a racial basis. Do you

6 recall a meeting?

7 A. I recall a meeting with Lynn on two

8 occasions.

9 Q. Okay. Do you recall a meeting where Lynn

10 Hubbard made those statements to you?

11 A. I believe on the second occasion -- and I

12 don't think she mentioned Marilyn on the

13 first occasion. I don't know. But on the

14 second occasion she mentioned that she

15 thought it was being developed for Marilyn

16 and she was concerned about that. And I

17 don't recall reference to the racial aspect

18 of it. It may very well have occurred. I

19 don't recall that specific reference. My

20 response was that I would do what I could

21 to assure that it was nondiscriminatory and

22 that it was not -- I'm not sure what

23 word -- that it was not just automatically

Page 109

1 going to be filled by Marilyn, that there

2 would be a fair and objective process of

3 selection.

4 Q. And is it your testimony that you did that

5 by ensuring that a third party panel was

6 assembled --

7 A. Partly.

8 Q. -- to conduct the interview process? What

9 else did you do to ensure that her concern

10 did not come to fruition?

11 A. Well, the advertisement of the position

12 was -- I think it was advertised on one

13 occasion throughout the department or the

14 mental health system and I believe it was

15 broadened to include the entire state

16 system. So that's what I would describe as

17 casting a wide net or broad net to assure

18 that there was at least an opportunity for

19 those that met the qualifications to

20 apply. That plus selecting the panel that

21 had outside people on it. Yes, those

22 actions.

23 Q. But you acknowledge, then, that Lynn

Deposition of John M. Houston

June 26, 2008

Page 110	Page 112
<p>1 Hubbard did come to you and express her</p> <p>2 fears that the job was being written</p> <p>3 specifically for Marilyn Benson?</p> <p>4 A. Something to that effect, yeah.</p> <p>5 Q. What did you do to ensure that the job was</p> <p>6 not specifically written for Marilyn</p> <p>7 Benson?</p> <p>8 A. Written for Marilyn Benson?</p> <p>9 Q. Correct.</p> <p>10 MR. NIX: Are you talking about</p> <p>11 like the specifications? Is</p> <p>12 that what you're talking</p> <p>13 about?</p> <p>14 MR. MOZINGO: Anything.</p> <p>15 A. I accepted the presentation of the</p> <p>16 associate commissioner that there was a</p> <p>17 need for that position. When I accepted</p> <p>18 that position and based upon factors that</p> <p>19 we've already discussed, then I think</p> <p>20 Lynn -- I'm not sure about the sequence of</p> <p>21 events. But then I was -- focused</p> <p>22 attention on making sure it was a fair</p> <p>23 process.</p>	<p>1 I've ever seen is that one.</p> <p>2 So unless there's another one,</p> <p>3 tell me now. And, again, that</p> <p>4 was just for the record that</p> <p>5 that same exhibit has been</p> <p>6 marked by a different number</p> <p>7 in a different deposition.</p> <p>8 Q. But, anyway, that is the -- what I have</p> <p>9 heard termed the specification sheet for</p> <p>10 the job Marilyn Benson currently holds. Do</p> <p>11 you understand that to be true?</p> <p>12 A. It appears to be.</p> <p>13 Q. Now, do you know who wrote Plaintiffs'</p> <p>14 Exhibit 19?</p> <p>15 A. No.</p> <p>16 Q. Do you know who drafted Plaintiffs' Exhibit</p> <p>17 19?</p> <p>18 A. No.</p> <p>19 Q. Do you know who did the research for</p> <p>20 comparable or similar positions for</p> <p>21 Plaintiffs' Exhibit 19?</p> <p>22 A. No.</p> <p>23 Q. Do you know that Plaintiffs' Exhibit 19 was</p>
Page 111	Page 113
<p>1 Q. Let me show you what's previously been</p> <p>2 marked Plaintiffs' Exhibit 19. And by the</p> <p>3 way, let me say for the record,</p> <p>4 Commissioner Houston, this would not</p> <p>5 involve you, but I just want to make sure</p> <p>6 the record is clear.</p> <p>7 MR. NIX: May I look at that?</p> <p>8 MR. MOZINGO: Yeah. What I'm</p> <p>9 going to do -- That's been</p> <p>10 marked twice and I want to</p> <p>11 make sure it's reflected in</p> <p>12 the record. That was Exhibit</p> <p>13 19 to Otha Dillihay's</p> <p>14 deposition. And I didn't have</p> <p>15 Mr. Dillihay's deposition back</p> <p>16 when we took Mr. Ervin's and</p> <p>17 Ms. Benson, and so that was</p> <p>18 remarked -- I believe it was</p> <p>19 Plaintiffs' Exhibit 46. And I</p> <p>20 just want to make that --</p> <p>21 MR. NIX: They're both the same</p> <p>22 document?</p> <p>23 MR. MOZINGO: Yeah. Well, all</p>	<p>1 typed by Marilyn Benson?</p> <p>2 A. No.</p> <p>3 Q. Did you know that Marilyn Benson did the</p> <p>4 research for comparable positions for</p> <p>5 Plaintiffs' Exhibit 19?</p> <p>6 A. No.</p> <p>7 Q. When did you first see Plaintiffs' Exhibit</p> <p>8 19?</p> <p>9 A. Gosh, I don't know. I don't know the</p> <p>10 answer to that.</p> <p>11 Q. Who -- Well, let me ask you this: Have you</p> <p>12 ever seen Plaintiffs' Exhibit 19?</p> <p>13 A. I've seen documents that -- regarding the</p> <p>14 assistant personnel manager which appeared</p> <p>15 to be either -- if not identical, similar</p> <p>16 to this.</p> <p>17 Q. Well, before this lawsuit was filed, had</p> <p>18 you ever seen Plaintiffs' Exhibit 19?</p> <p>19 A. I expect so. You know, I don't have a</p> <p>20 specific recollection of it, but there were</p> <p>21 drafts at different times I saw some. I'm</p> <p>22 sure I saw the announcement. Did I see</p> <p>23 this particular draft? I expect that I</p>



Deposition of John M. Houston

June 26, 2008

Page 114

Page 116

1 did, but I can't say that with absolute  
 2 certainty.  
 3 Q. And we know -- we've heard testimony that  
 4 the specification sheet was used as a basis  
 5 for writing the job announcement. Did you  
 6 ever see the -- You told me you've seen  
 7 drafts. Did you ever see the final draft  
 8 or the final job specification sheet that  
 9 was used to prepare the job announcement  
 10 for Departmental Assistant Personnel  
 11 Manager?  
 12 A. I have no specific recollection of that. I  
 13 would suspect that I did, but I have no  
 14 specific recollection of it.  
 15 Q. Did you ever make any changes or proposed  
 16 changes to the job specification --  
 17 A. I don't --  
 18 Q. Let me finish.  
 19 -- for the position of Departmental  
 20 Assistant Personnel Manager?  
 21 A. I don't recall making any changes in the  
 22 specs.  
 23 Q. Who would have presented the job

Page 115

1 specification sheet for you -- to you?  
 2 A. Either Henry or Otha. Probably Otha.  
 3 Q. So you believe when you received  
 4 Plaintiffs' Exhibit 19, if you received it,  
 5 you -- it was presented to you by Otha  
 6 Dillihay?  
 7 A. It would be one of them. I believe it was  
 8 Otha.  
 9 Q. We see the knowledge, skills and abilities  
 10 on Plaintiffs' Exhibit 19. Do you know who  
 11 formulated those knowledge, skills and  
 12 abilities?  
 13 A. No.  
 14 Q. Did you ever discuss with anyone who  
 15 formulated them?  
 16 A. Not the KSAs, no.  
 17 Q. KSA meaning knowledge, skills and  
 18 abilities?  
 19 A. Correct.  
 20 Q. Do you know whether Marilyn Benson has the  
 21 same knowledge, skills and abilities that  
 22 are set forth in Plaintiffs' Exhibit 19?  
 23 A. Do I know if she possesses those knowledge,

1 skills and abilities?  
 2 Q. Correct.  
 3 A. I would expect that she would, but I cannot  
 4 say that I know that she had every one of  
 5 those.  
 6 Q. Did you expect that she would have those  
 7 same knowledge, skills and abilities back  
 8 when Plaintiffs' Exhibit 19 was formulated?  
 9 A. It did not occur to me.  
 10 Q. Did you ever ask anyone?  
 11 A. If she had the knowledge, skills and  
 12 abilities?  
 13 Q. Those same knowledge, skills and abilities.  
 14 A. No. No.  
 15 Q. And when Lynn Hubbard came to you and told  
 16 you that she believed this job was being  
 17 written for Marilyn Benson, did you go and  
 18 ask anybody if Marilyn Benson had the same  
 19 knowledge, skills and abilities that are  
 20 reflected in Plaintiffs' Exhibit 19?  
 21 A. No.  
 22 Q. When Lynn Hubbard came to you and voiced  
 23 her concern, did you ever ask anyone

Page 117

1 whether Marilyn Benson was already  
 2 performing the same or similar work as set  
 3 forth in the examples of work performed on  
 4 Plaintiffs' Exhibit 19?  
 5 A. No.  
 6 Q. Did you know in January 2005 that Marilyn  
 7 Benson had the same qualifications that are  
 8 reflected on Plaintiffs' Exhibit 19?  
 9 MR. NIX: Let me object to the  
 10 form of the question in that  
 11 it assumes facts not in  
 12 evidence.  
 13 A. I was familiar with the fact that she had a  
 14 master's degree.  
 15 Q. Is a master's degree referenced in the  
 16 qualifications for Plaintiffs' Exhibit 19?  
 17 A. I don't see. As far as this specific area  
 18 that her degree was in, I don't know.  
 19 Q. Did you ever look -- specifically review  
 20 the qualifications set forth in Plaintiffs'  
 21 Exhibit 19 back in 2005?  
 22 MR. NIX: I'm sorry. Did he ever  
 23 look at the qualifications?



Deposition of John M. Houston

June 26, 2008

Page 118

Page 120

1 Q. Let me back up and ask it a different way.  
 2 MR. NIX: I apologize. I'm  
 3 sorry.  
 4 MR. MOZINGO: No. It was a poor  
 5 question.  
 6 Q. Back in 2005, Commissioner Houston, did you  
 7 specifically review the qualifications set  
 8 forth in Plaintiffs' Exhibit 19?  
 9 A. I have no specific recollection of it, but  
 10 I suspect that I did.  
 11 Q. And did you discuss those qualifications  
 12 with anyone?  
 13 A. I have no specific recollection, but I  
 14 expect that I did probably with Otha.  
 15 Q. Do you recall generally what you discussed  
 16 with Otha Dillihay regarding the  
 17 qualifications?  
 18 MR. NIX: You're talking about the  
 19 qualifications? I'm sorry. I  
 20 keep writing KSAs. I'm still  
 21 on KSAs.  
 22 MR. MOZINGO: We're on  
 23 qualifications. He says he

Page 119

1 thinks he would have discussed  
 2 it with Otha.  
 3 A. It generally would be typical that I would,  
 4 and I know that we had discussed that  
 5 position on some occasions. I don't recall  
 6 specifically discussing the  
 7 qualifications. I suspect that we did. I  
 8 don't recall.  
 9 Q. Did you ever discuss with Otha Dillihay  
 10 whether the qualifications for the position  
 11 were written to give any employee in the  
 12 department a competitive advantage for the  
 13 position?  
 14 A. I recall that we discussed the objection  
 15 that Lynn raised. I don't recall that that  
 16 got into the area of whether it was written  
 17 specifically for Marilyn -- you know, the  
 18 KSAs or qualifications were written for  
 19 her. I don't recall any discussion  
 20 specifically to that point.  
 21 Q. And when did y'all have that discussion?  
 22 A. Which discussion?  
 23 Q. When y'all discussed the objection that

1 Lynn had made.  
 2 A. I don't know specifically. It was within  
 3 the time frame that the position was being  
 4 formulated, the KSAs and qualifications  
 5 were being formulated and the plan for the  
 6 announcement.  
 7 Q. Well, was it within a day or a week or a  
 8 month within Lynn Hubbard coming to you and  
 9 voicing her concerns?  
 10 A. Certainly within a month, but I don't know  
 11 exactly.  
 12 Q. You don't know if it would have been less  
 13 than a month?  
 14 A. I suspect that it was, but I don't recall  
 15 dates.  
 16 Q. And what did y'all discuss about Lynn  
 17 Hubbard's concerns or objections?  
 18 A. Acknowledging that there was a concern and  
 19 agreeing that it was not being formulated  
 20 for Marilyn and that we would take the  
 21 steps necessary to see that the  
 22 qualifications were appropriate and that  
 23 the selection process was fair and open.

Page 121

1 Q. And how did y'all -- Did you do anything to  
 2 ensure yourself, Commissioner Houston, that  
 3 these specifications were not written to  
 4 give Marilyn Benson a competitive advantage  
 5 or preference for this position?  
 6 MR. NIX: I object to the form.  
 7 That's been asked and  
 8 answered.  
 9 A. My efforts were to assure that the process  
 10 was fair and that she would not have --  
 11 that no one would have an unfair advantage  
 12 through the process. We did not discuss  
 13 the drafting of KSAs or qualifications as  
 14 giving her a particular advantage, and I  
 15 don't view them as giving her a particular  
 16 advantage.  
 17 Q. Have you ever compared Marilyn Benson's  
 18 resume with the job specification contained  
 19 in Plaintiffs' Exhibit 19?  
 20 A. No.  
 21 Q. Have you ever compared Marilyn Benson's  
 22 performance appraisals with the job  
 23 specifications set forth in Plaintiffs'

Page 122

1 Exhibit 19?  
 2 A. No.  
 3 Q. Could you have done that to ensure that  
 4 this specification was not written for  
 5 Marilyn Benson?  
 6 A. Could I have done that?  
 7 Q. Yes, sir.  
 8 A. Of course.  
 9 Q. But you did not do that?  
 10 A. No, I did not.  
 11 Q. Did you rely on Otha Dillihay's assurance  
 12 that it was not written for Marilyn Benson?  
 13 A. Again, we discussed the fact that a concern  
 14 had been raised and discussed the  
 15 qualifications and the process and focused  
 16 on that. I'm not concerned today that it  
 17 was written for Marilyn.  
 18 Q. You have no concerns today?  
 19 A. No.  
 20 Q. Marilyn Benson testified that she actually  
 21 typed up this document; okay?  
 22 A. (Witness nods head).  
 23 Q. And she testified that she did the research

Page 123

1 for this document. In fact, she testified  
 2 that she typed up the notice -- and we'll  
 3 go through them in a minute -- but almost  
 4 all the documents concerning the creation  
 5 of this position or all of the documents  
 6 concerning the creation of this position.  
 7 And she testified this week that when they  
 8 score the applications compared to the  
 9 qualifications for the position, she made a  
 10 perfect score. And you still have no  
 11 concerns today that this job or these  
 12 specifications were designed to give  
 13 Marilyn a competitive advantage?  
 14 MR. NLX: I object to the form of  
 15 the question in that it states  
 16 facts not in evidence and  
 17 incorrectly states facts.  
 18 A. I believe the examples of work performed,  
 19 the knowledge, skills and abilities and the  
 20 qualifications required reasonably and  
 21 accurately reflect what would be called for  
 22 in that position.  
 23 Q. Do you know what other states would call

Page 124

1 for for similar positions?  
 2 A. I have done no such research nor have I  
 3 seen such documents.  
 4 Q. Do you know Marilyn Benson has?  
 5 A. I didn't know that, but I think that's part  
 6 of her job.  
 7 Q. Whose idea was it to leave the substitution  
 8 clause out?  
 9 A. I don't know whose idea it was. I approved  
 10 the qualifications as they were presented.  
 11 Q. Was it your idea to leave it out?  
 12 A. I'm not sure that I ever saw it in there.  
 13 I know Lynn raised a concern about the  
 14 substitution clause. At the time that she  
 15 did, which was the first meeting, honestly  
 16 I was not sure what that was in reference  
 17 to. I mean, there is substitution issues  
 18 that occurred from time to time.  
 19 I honestly was not sure what that was in  
 20 reference to. It was more to me at the  
 21 time -- and I may have been distracted --  
 22 but to me it was more general.  
 23 Q. And when Lynn raised a concern about the

Page 125

1 substitution clause or it not being in  
 2 there, was that before this conversation  
 3 you just told me about where she expressed  
 4 her concern that the job was being written  
 5 for Marilyn?  
 6 A. The first time that we spoke, she raised  
 7 the question about the substitution and  
 8 mentioned that something was in the works  
 9 in that regard. And I was not sure what  
 10 she was talking about. And I may have been  
 11 distracted, but I just -- I was confused or  
 12 uncertain. I just wasn't sure what she was  
 13 talking about. Subsequently, on the second  
 14 occasion was when -- as best I recall when  
 15 the issue about this was made for Marilyn  
 16 and designed for her and that's what's  
 17 going to happen. That's when that was --  
 18 that subject was broached.  
 19 Q. So in the first conversation Lynn Hubbard  
 20 raised her concerns about the use or the  
 21 lack of use of the substitution clause;  
 22 correct?  
 23 A. General, yes.

Deposition of John M. Houston

June 26, 2008

Page 126

1 Q. And did she raise that concern with regard  
2 to this position, Departmental Assistant  
3 Personnel Manager?  
4 MR. NIX: Object to the form.  
5 A. I don't recall.  
6 Q. And when I say this position, for the  
7 record I'm tapping Plaintiffs' Exhibit 19.  
8 A. She may have. It did not register with  
9 me. And I don't recall.  
10 Q. When did that first conversation occur?  
11 A. I don't know.  
12 Q. Did you do anything in response or after  
13 that first conversation to follow up on her  
14 concerns to see if there was any validity  
15 there?  
16 MR. NIX: I object to the form.  
17 MR. MOZINGO: Yeah. He probably  
18 should object to that one.  
19 I'll sustain that objection.  
20 MR. NIX: Thank you very much,  
21 Your Honor.  
22 Q. Did you do anything after that first  
23 conversation to follow up on the concerns

Page 127

1 expressed by Lynn Hubbard?  
2 MR. NIX: Object to the form.  
3 A. She raised the issue, and I was uncertain  
4 as to what it related to other than a  
5 general concern about substitution. I  
6 recall reference to -- and I'll say  
7 something that was in the works. And I  
8 can't recall much more than that. And I  
9 was expecting to see something on that  
10 topic. I did not. I think later when Lynn  
11 visited the second time I just recall in a  
12 general way. She mentioned the job -- the  
13 specific job was made for Marilyn and  
14 mentioned the -- and, again, I can't  
15 remember, but in general -- mentioned the  
16 substitution issue. So between those two  
17 conversations, no, I did not.  
18 Q. Between those two conversations you didn't  
19 do anything to follow up on her concerns?  
20 A. I thought I --  
21 MR. NIX: Excuse me. Let me  
22 object to the form of the  
23 question again. And I would

Page 128

1 just say that it's been asked  
2 and answered several times  
3 now. Are you going to ask it  
4 again or --  
5 MR. MOZINGO: I'm going to try not  
6 to. I'm just trying to make  
7 sure I understand his answer.  
8 MR. NIX: So what is the question  
9 again?  
10 MR. MOZINGO: Well, he said  
11 between the two he did not,  
12 and I'm trying to clarify he  
13 did not what.  
14 A. After the first occasion, as I've said a  
15 number of times, it was not clear to me  
16 exactly what the concern was other than  
17 that there was a concern about the  
18 substitution issue. Since it was not clear  
19 to me, I didn't take any action.  
20 Q. After the first conversation or after the  
21 second conversation?  
22 A. After the first.  
23 Q. So you didn't take any action between the

Page 129

1 first and the second, and after the second  
2 you told me you spoke to Otha Dillihay;  
3 correct?  
4 MR. NIX: Well, he -- I'm not  
5 sure --  
6 MR. MOZINGO: I'm trying not to  
7 replot ground we've been over.  
8 He told me --  
9 MR. NIX: I just think you -- You  
10 may be misquoting him a little  
11 bit. Not a lot, but a little  
12 bit.  
13 A. Otha and I spoke on a number of occasions.  
14 Q. I know. What I heard from you -- And this  
15 is why I'm asking because I want to make  
16 sure that I heard what you said. After the  
17 first conversation you didn't do anything  
18 to follow up on the concerns expressed by  
19 Lynn Hubbard. That's what I understand you  
20 to say. Is that true?  
21 MR. NIX: I object to the form.  
22 He's already told you he  
23 didn't understand what she was

Page 130

1 even talking about at that  
2 time.

3 MR. MOZINGO: Yes, he did. And --

4 A. I understood that there's substitution  
5 issues. I was not sure what that was in  
6 relation to. Again, maybe I was distracted  
7 and it didn't register, but I don't recall  
8 that. I do recall that I was uncertain  
9 about just what I was being asked to do  
10 other than to be alert that something was  
11 coming through. Something. And I  
12 considered myself looking for that  
13 something. Well, apparently that something  
14 was the job specs for that specific  
15 position so --

16 MR. NIX: In retrospect is what  
17 you're saying?

18 A. In retrospect. And subsequently when she  
19 raised the question about this position is  
20 being made for Marilyn, at that point the  
21 specs had already been drafted. I had no  
22 objection to the specifications as they  
23 were drafted. So I'm not sure what I would

Page 131

1 have done other than discard the whole  
2 thing.

3 Q. I've heard testimony that this same job  
4 previously existed within the department.  
5 Is that true?

6 A. That's my understanding.

7 Q. Did you ask to see the old job specs for  
8 the position?

9 A. Quite frankly at the time it did not occur  
10 to me that it had been created or anyone  
11 had filled that position previously.

12 Q. I've heard this called a new job, but then  
13 I've heard testimony that Henry Ervin once  
14 held this same job. So back in -- This was  
15 dated '05 when this job spec was  
16 developed. But back in 2005 or 2004 you  
17 did not ask to see the specification sheet  
18 for the job back when Henry Ervin held it;  
19 is that correct?

20 A. It did not occur to me that it had  
21 previously -- there had previously been  
22 such a job. So I didn't ask for the specs  
23 on that.

Page 132

1 Q. But you would have been working in the  
2 commissioner's office, whether it be as an  
3 assistant or associate commissioner back  
4 when Henry Ervin actually held this job; is  
5 that correct?

6 MR. NIX: I object to the form of  
7 the question.

8 Q. Is that correct?

9 A. I was in that position when Henry held that  
10 job.

11 Q. Okay. Other than speaking to Otha  
12 Dillihay, did you do anything else to  
13 ensure that this job specification was not  
14 written to give Marilyn Benson a preference  
15 or a competitive advantage?

16 MR. NIX: Excuse me. He's already  
17 testified that he did other  
18 things now. Are you asking  
19 him other than what he's  
20 already testified to?

21 MR. MOZINGO: He testified that he  
22 did other things such as the  
23 panel and ensuring the

Page 133

1 advertisement. But this has  
2 to go -- This question is  
3 related to the job specs. And  
4 he told me he spoke to Otha  
5 Dillihay about the job specs.

6 Q. So I want to make sure other than Otha  
7 Dillihay talking to him, did you do  
8 anything else to ensure that these job  
9 specs were not written to give Marilyn  
10 Benson a competitive advantage or  
11 preference?

12 A. I considered the document in its entirety,  
13 including the KSAs and qualifications, to  
14 accurately and adequately address the job  
15 requirements of that position. Now,  
16 whether or not someone may have intended to  
17 write it for a particular person would have  
18 been secondary, but -- if they adequately  
19 reflected what was needed in that  
20 position. And I felt like trying to assure  
21 that the advertisement of that position was  
22 broadly distributed and that the interview  
23 and selection process was fair and included



Deposition of John M. Houston

June 26, 2008

Page 134

1 people who were outside of the central  
 2 office, for example. I considered those  
 3 things to address the process as being  
 4 sufficient to address whatever concerns  
 5 were about that position.  
 6 Q. Why did you approve the omission of a  
 7 substitution provision for this job?  
 8 MR. NIX: Let me object to the  
 9 term omission as being  
 10 contrary to correct form in  
 11 terms of the question, so ...  
 12 MR. MOZINGO: Since I don't know  
 13 the correct form, that's what  
 14 I'm going to use.  
 15 Q. This job spec does not allow substitution;  
 16 correct?  
 17 A. Correct.  
 18 Q. And you approved that?  
 19 A. That's correct.  
 20 Q. Why?  
 21 A. I would hope that an assistant director  
 22 would be able -- and this was part of the  
 23 rationale for that position that someone

Page 135

1 would have that overall responsibility of  
 2 supervising that area in absence of the  
 3 director. So I would hope that the  
 4 qualifications would be appropriate for  
 5 someone who may qualify for the director's  
 6 position. I was interested in -- I felt  
 7 like the college degree was a basic level  
 8 qualification.  
 9 Q. Now, Henry Ervin held the position of  
 10 departmental personnel manager; correct?  
 11 A. Yes.  
 12 Q. And Henry Ervin held that position in the  
 13 capacity as a Personnel Manager Level IV or  
 14 Series IV; correct?  
 15 A. I don't know what classification he was in  
 16 or what level.  
 17 Q. Okay. Well, assuming he testified that he  
 18 was a Personnel Manager IV, were you aware  
 19 that the specification for a Personnel  
 20 Manager IV allows substitution?  
 21 A. No.  
 22 MR. NIX: Are you talking about  
 23 the old spec or the new spec?

Page 136

1 MR. MOZINGO: I'm talking about  
 2 the spec on the day this  
 3 Plaintiffs' Exhibit 19 was  
 4 written.  
 5 Q. So you weren't aware of that?  
 6 A. No.  
 7 Q. Did you ever ask to see the job  
 8 specification sheet for Henry Ervin's job?  
 9 A. No.  
 10 Q. Do you think that would have been a  
 11 reasonable thing to do in approving the  
 12 specification sheet for Henry Ervin's  
 13 assistant?  
 14 MR. NIX: I object to the form.  
 15 A. It would be a reasonable thing to consider.  
 16 Q. Is there some reason you didn't ask to see  
 17 the specification sheet for Henry Ervin's  
 18 job?  
 19 A. Typically I would not be involved at that  
 20 level of detail.  
 21 Q. Well, you as the commissioner, would you  
 22 want to assure the job specs for the  
 23 department assistant personnel manager were

Page 137

1 at least consistent with or complimentary  
 2 to the job specs for the person who held  
 3 the position of department manager or  
 4 departmental personnel manager?  
 5 A. They're consistent. Is that --  
 6 Q. Consistent or complimentary.  
 7 A. I think that's something to be considered.  
 8 I'm concerned about -- I'm more concerned  
 9 with the qualifications of the particular  
 10 positions being appropriate than what might  
 11 have been included in previous positions or  
 12 drafts or formulations of job specs over  
 13 the years. And I felt like having the  
 14 opportunity to fill new positions in  
 15 personnel that we would seek the most  
 16 qualified and most professional folks. And  
 17 often that includes some sort of threshold  
 18 of a bachelor's or master's degree. And I  
 19 felt it was appropriate that that threshold  
 20 in this case would be a college degree.  
 21 Q. Can a person be competent to perform the  
 22 duties of the Departmental Assistant  
 23 Personnel Manager without possessing a



Deposition of John M. Houston

June 26, 2008

Page 138

1 bachelor's degree?  
 2 A. That's possible.  
 3 Q. And can a person have the knowledge, skills  
 4 and abilities set forth in Plaintiffs'  
 5 Exhibit 19 without possessing a college  
 6 degree?  
 7 A. Yes.  
 8 Q. Do you know if -- or do you have an opinion  
 9 whether Joan Owens would be competent to  
 10 perform the duties and responsibilities of  
 11 Departmental Assistant Personnel Manager?  
 12 A. I don't know.  
 13 Q. Do you know if Lynn Hubbard would be  
 14 competent to perform the duties and  
 15 responsibilities of the Departmental  
 16 Assistant Personnel Manager?  
 17 A. I don't know.  
 18 Q. Do you know that due to the omission or  
 19 absence or failing to include a  
 20 substitution clause that Joan Owens and  
 21 Lynn Hubbard did not apply for the position  
 22 of Departmental Assistant Personnel  
 23 Manager?

Page 139

1 A. It has been brought to my attention.  
 2 Q. When was it brought to your attention?  
 3 A. I don't recall specifically, but I'm sure  
 4 it was during the time frame -- somewhere  
 5 between the advertisement of the position,  
 6 the filling of the position or  
 7 subsequently. I'm not sure.  
 8 Q. Did you know back when that position -- or  
 9 before that position was advertised that  
 10 they wanted to apply for the position?  
 11 A. No.  
 12 Q. Did you know once it was advertised that  
 13 they wanted to apply for the position?  
 14 A. I don't recall. I don't think so. I don't  
 15 recall. Could very well. I just don't  
 16 recall at what point that -- I don't  
 17 recall.  
 18 Q. Well, do you know how competitive Joan  
 19 Owens or Lynn Hubbard would have been for  
 20 that position if they had had an  
 21 opportunity to apply?  
 22 MR. NIX: What do you mean by  
 23 competitive? Let me object to

Page 140

1 the form of the question and  
 2 the use of the word how  
 3 competitive or the term how  
 4 competitive.  
 5 Q. Do you know whether Joan Owens or Lynn  
 6 Hubbard would have been competitive if they  
 7 had had an opportunity to apply for this  
 8 position?  
 9 MR. NIX: Again, let me object to  
 10 the form of the question on  
 11 the basis of the use of the  
 12 word competitive.  
 13 A. I don't know.  
 14 Q. Let me show you what's previously been  
 15 marked Plaintiffs' Exhibit 49. Are you  
 16 aware that Marilyn Benson prepared that  
 17 document?  
 18 A. No.  
 19 Q. Do you know what the document is?  
 20 A. Yes.  
 21 Q. It is requesting that job codes for new  
 22 exempt positions be established or  
 23 obtained; correct?

Page 141

1 A. Yes.  
 2 Q. Have you ever seen Plaintiffs' Exhibit 49  
 3 before today?  
 4 A. Probably, but I don't recall it  
 5 specifically.  
 6 Q. Do you recall when the first time would  
 7 have been that you would have seen it?  
 8 A. No. It was probably certainly around the  
 9 time of February of 2005, but I don't  
 10 recall.  
 11 Q. Do you recall when you were asked for  
 12 approval to create this position?  
 13 A. I don't recall the date. I'm sure that  
 14 it's in some of these records somewhere.  
 15 Q. Let me show you what's previously been  
 16 marked as Plaintiffs' Exhibit 50. Have you  
 17 seen that document before?  
 18 A. I'm sure I have.  
 19 Q. Do you recall when you first saw it?  
 20 A. On or around June 14th of '05 I suspect,  
 21 but I don't recall a specific day.  
 22 Q. Had you approved the creation of that  
 23 position prior to June 14th, 2005?

Deposition of John M. Houston

June 26, 2008

Page 142	Page 144
<p>1 A. I don't recall specific dates, but I expect</p> <p>2 so. But I don't recall the specific date</p> <p>3 that I approved that.</p> <p>4 Q. But you do expect that you had approved the</p> <p>5 creation of the position of Departmental</p> <p>6 Assistant Personnel Manager prior to you</p> <p>7 receiving Plaintiffs' Exhibit 50?</p> <p>8 A. Let me read this, if I may.</p> <p>9 Q. Sure.</p> <p>10 (Brief pause.)</p> <p>11 A. Okay. The question?</p> <p>12 Q. The question was, did you approve the</p> <p>13 creation of that position prior to</p> <p>14 receiving Plaintiffs' Exhibit 50?</p> <p>15 A. The contents suggest not. And I'm not</p> <p>16 sure. I imagine that we discussed it. I</p> <p>17 may have approved it in principle. But I</p> <p>18 don't recall the specific date that it was</p> <p>19 approved.</p> <p>20 Q. Well, did you receive what's been marked</p> <p>21 Plaintiffs' Exhibit 50 prior to June 14th,</p> <p>22 2005?</p> <p>23 A. I wouldn't think so. I don't recall the</p>	<p>1 Benson prepared this document?</p> <p>2 A. No.</p> <p>3 Q. And she testified that she would have</p> <p>4 prepared it on or about that date, yet that</p> <p>5 is about four or five months after</p> <p>6 Plaintiffs' Exhibit 49. Are you aware of</p> <p>7 that?</p> <p>8 A. Bureaucracies can move slowly at times. It</p> <p>9 doesn't surprise me.</p> <p>10 Q. Well, is that the way the bureaucracy</p> <p>11 worked in this case that a classification</p> <p>12 and pay range and a job code were obtained</p> <p>13 for a position all before you, Commissioner</p> <p>14 Houston, were even asked to approve the</p> <p>15 creation of the position?</p> <p>16 MR. NIX: Object to the form.</p> <p>17 A. That's not necessarily the case. I would</p> <p>18 think that typically that at the very least</p> <p>19 we would have discussed it and I would have</p> <p>20 approved in principle. And I don't recall</p> <p>21 all the discussions, but it -- I do recall</p> <p>22 the consideration of the responsibility for</p> <p>23 wage and class study as part of the</p>
Page 143	Page 145
<p>1 exact date. But since it's dated June</p> <p>2 14th, I probably didn't receive it before</p> <p>3 then.</p> <p>4 Q. But you were aware that the position was</p> <p>5 being created prior to June 14th, 2005?</p> <p>6 A. Again, I can't remember the specific dates</p> <p>7 that a lot of these things occurred. We</p> <p>8 discussed the consideration of establishing</p> <p>9 a position. We discussed -- I say we --</p> <p>10 Otha on occasion, Henry on occasion what</p> <p>11 would be the justification for it, why we</p> <p>12 would need it, this sort of thing. And</p> <p>13 that went through different stages,</p> <p>14 drafting of a proposed job specs,</p> <p>15 announcements, things of this sort that</p> <p>16 occurred over a period of time. But I</p> <p>17 don't recall specific dates of each of</p> <p>18 those milestones.</p> <p>19 Q. Well, according to Plaintiffs' Exhibit 50,</p> <p>20 it would have been prepared on or about</p> <p>21 June 14th, 2005?</p> <p>22 A. It appears so.</p> <p>23 Q. And I believe -- Are you aware that Marilyn</p>	<p>1 justification. But your question is it</p> <p>2 likely that this would be processed before</p> <p>3 I had approved it, no.</p> <p>4 Q. So are you saying it would be unlikely that</p> <p>5 this, Plaintiffs' Exhibit 49, would be</p> <p>6 processed before you approved the creation</p> <p>7 of the position?</p> <p>8 A. I don't believe that there would be a</p> <p>9 request to state personnel to establish a</p> <p>10 position without at least my verbal</p> <p>11 approval, if not written approval. Because</p> <p>12 I would sign off on the establishment of</p> <p>13 new positions. The circumstances around</p> <p>14 this particular memo that's four months</p> <p>15 later, I don't recall the discussions and</p> <p>16 the actions that were occurring at that</p> <p>17 specific -- particular time.</p> <p>18 Q. Well, was the creation of that position, in</p> <p>19 fact, approved by you on or before February</p> <p>20 17th, 2005?</p> <p>21 A. I don't know. I would expect that it would</p> <p>22 have been --</p> <p>23 Q. Or let me check the date. On or before</p>

Deposition of John M. Houston

June 26, 2008

Page 146

Page 148

February 3rd, 2005.

A. I would expect that I would have at least again had verbal discussions and approval before that was in process.

Q. When you say before that, you're referring to Plaintiffs' Exhibit 49?

A. That's correct.

Q. Then what was the necessity of Plaintiffs' Exhibit 50 if you already would have given verbal approval?

A. Again, I don't recall the circumstances surrounding that particular document and that date. It may have been further explanation. It may have been an attachment to something that subsequently was processed. It may have been a response to a question. I don't recall the circumstances.

Q. Could -- Now, let me make sure I understand. Was the position of Departmental Assistant Personnel Manager being created because a wage and class study was going to be done?

There are all sorts of consideration. So, yes, it could have been assumed by the existing staff. The decision was made that all things considered it would justify a new position.

Q. Could it likewise have been accomplished utilizing the existing staff and adding another personnel specialist to the staff to help with the work?

MR. NIX: I'm sorry. What's it?

MR. MOZINGO: The work on the wage and class study.

MR. NIX: Did you get the question? I interrupted you.

I apologize.

A. Could the wage and class study have been accomplished by adding -- paraphrasing -- a lesser level position?

Q. Yeah. Another personnel specialist to the department to help with the work.

A. Perhaps. But then that would not address the issue of having a supervisory person in that office when the director was not

Page 147

Page 149

A. No. But that would have been part of the responsibilities of that new position.

Q. Could those responsibilities have been carried out without creating a new position?

A. Certainly.

Q. And I believe Marilyn Benson testified this week that one of her specialties as a Personnel Specialist III was wage and class studies.

MR. NIX: Object to the form.

A. We could take on any number of projects and responsibilities infinitely, practically, without adding new positions. But you have to consider the workloads, the timeliness of things that are processed, any number of things and weigh that in relation to the cost, financial and otherwise, of establishing a new position. Sometimes the decision is, well, we can absorb that with existing staff. Sometimes, no, we need someone focusing on this or we need another staff person because of the workload.

there.

Q. Well, you told me that you weren't aware that Marilyn Benson was already being appraised in her employment appraisals or performance appraisals for serving in Henry Ervin's absence.

MR. NIX: I object to the form of the question. I think it mischaracterizes both Ms. Benson's testimony and the other testimony in the case.

A. Was I aware through the review of the performance appraisals? I don't --

Q. Let me ask it this way: Could someone have served in the capacity of -- or served in Henry Ervin's capacity in his absence or served as his assistant without creating a brand new job for that position?

A. That's an option.

Q. Did you ever consider that option?

A. I don't recall a consideration of that option. I believe that all three of the individuals in question had the same

Deposition of John M. Houston

June 26, 2008

Page 150	Page 152
<p>1 position, same classification. So I guess</p> <p>2 what you're describing would be an option.</p> <p>3 It wasn't taken.</p> <p>4 Q. Why not?</p> <p>5 A. The associate commissioner presented the</p> <p>6 request. We discussed it. I felt it was</p> <p>7 reasonable. That was sufficient.</p> <p>8 Q. Sufficient for you?</p> <p>9 A. (Witness nods head). Yes.</p> <p>10 Q. Let me show you what's previously been</p> <p>11 marked Plaintiffs' Exhibit 68, and that's a</p> <p>12 draft of one of the job announcements for</p> <p>13 the position of Assistant Departmental</p> <p>14 Personnel Manager. Have you ever seen that</p> <p>15 draft before?</p> <p>16 A. I don't know. Probably, but I don't know.</p> <p>17 Q. And that draft was prepared by Marilyn</p> <p>18 Benson. Were you aware of that?</p> <p>19 A. No.</p> <p>20 Q. Did you ever ask anybody who was working on</p> <p>21 preparing the job specification or the</p> <p>22 announcements or notices for the position</p> <p>23 of Assistant Departmental Personnel</p>	<p>1 position was discussed at the job</p> <p>2 evaluation committee at one time. I</p> <p>3 believe that it's likely that the job specs</p> <p>4 were part of that discussion.</p> <p>5 Q. Who told you that?</p> <p>6 A. I think Lynn did the first time.</p> <p>7 Q. You think Lynn told you that?</p> <p>8 A. I believe the second time that we spoke was</p> <p>9 when she pointed out, well, this, whatever</p> <p>10 that was, has gone through the job</p> <p>11 evaluation committee.</p> <p>12 Q. And you don't recall what this was?</p> <p>13 A. Well, it was probably consideration of</p> <p>14 creating the job.</p> <p>15 Q. And you can consider creating a job</p> <p>16 independently of approving the</p> <p>17 specifications for the job, can you not?</p> <p>18 A. Yes.</p> <p>19 Q. And my question is, do you know whether the</p> <p>20 job evaluation committee ever approved the</p> <p>21 specifications for the position of</p> <p>22 Departmental Assistant Personnel Manager?</p> <p>23 A. I don't know the extent of the discussion</p>
Page 151	Page 153
<p>1 Manager?</p> <p>2 A. I assumed it would be people in personnel.</p> <p>3 But otherwise, no.</p> <p>4 Q. You assumed it would be somebody in the</p> <p>5 central personnel office?</p> <p>6 A. Yes.</p> <p>7 Q. But you didn't know who would be doing it?</p> <p>8 A. Correct.</p> <p>9 Q. Did you ever ask Henry Ervin or Otha</p> <p>10 Dillihay who was doing it?</p> <p>11 A. No. Because it would be subsequently</p> <p>12 reviewed by each of them. And Otha is</p> <p>13 associate commissioner. There would be an</p> <p>14 opportunity to consider whatever they felt</p> <p>15 was appropriate. And, no, I didn't ask who</p> <p>16 was drafting that specific document.</p> <p>17 Q. Did the job evaluation committee ever</p> <p>18 review the job specs for the position of</p> <p>19 Departmental Assistant Personnel Manager?</p> <p>20 A. I believe so.</p> <p>21 Q. And why do you believe that?</p> <p>22 A. The job specs -- I know that that</p> <p>23 position -- I've been told that that</p>	<p>1 they had regarding the specifications. I</p> <p>2 believe that that was submitted as a -- the</p> <p>3 recommended position was supported by the</p> <p>4 job evaluation committee. They don't have</p> <p>5 approval -- authority to approve a</p> <p>6 position. They would make a recommendation</p> <p>7 regarding that.</p> <p>8 Q. Is it your policy for the job evaluation</p> <p>9 committee to review and make -- well,</p> <p>10 strike that.</p> <p>11 Is it your policy for the job</p> <p>12 evaluation committee to evaluate the</p> <p>13 specifications for a new job and make a</p> <p>14 recommendation before you make a final</p> <p>15 approval or give your final approval?</p> <p>16 MR. NIX: Object to the form.</p> <p>17 A. Is it typical or is it expected that they</p> <p>18 would review the job specs? Is that what</p> <p>19 you're --</p> <p>20 Q. Well, would you have expected the job</p> <p>21 evaluation committee to have reviewed the</p> <p>22 job specs for the position of Departmental</p> <p>23 Assistant Personnel Manager?</p>



Deposition of John M. Houston

June 26, 2008

Page 154

Page 156

1 MR. NIX: Object to the form.

2 A. Probably, but not necessarily in every  
3 position.

4 Q. Okay. And I heard you say not necessarily  
5 in every position. What I'm trying to  
6 clarify is would you have expected the job  
7 evaluation committee to approve the job  
8 specs for the position of Departmental  
9 Assistant Personnel Manager?

10 A. Probably.

11 Q. Do you know for a fact that they approved  
12 the job specs?

13 A. I believe they did, but I don't recall all  
14 the particulars of that.

15 Q. Okay. Would their review -- Put it this  
16 way. Let me ask it this way. Strike that  
17 earlier question.

18 Would you have approved the job specs  
19 for the position of Departmental Assistant  
20 Personnel Manager without the job  
21 evaluation committee first having an  
22 opportunity to --

23 A. Possibly.

Page 155

Page 157

1 Q. -- approve the job specs?

2 A. Possibly.

3 Q. So in the position or with the position of  
4 Departmental Assistant Personnel Manager  
5 you would have approved the job  
6 specifications irrespective of whether the  
7 job evaluation committee was for or against  
8 the job specs?

9 A. It's possible. They're an advisory group.

10 Q. Well, I want you to assume a hypothetical.  
11 Assume they had reviewed the job specs and  
12 not recommended them, would you still have  
13 approved them?

14 MR. NIX: Let me object to the  
15 form of the question. It's a  
16 hypothetical. Facts not in  
17 evidence and incorrect facts  
18 as well.

19 MR. MOZINGO: Like I said, it's a  
20 hypothetical.

21 A. It's possible.

22 Q. Why is it possible?

23 A. I charge the job evaluation committee to

1 assist me in review of positions that have

2 been requested or whether it was the

3 creation or upgrading or whatever that

4 might be. I did that because I was fairly

5 recently appointed in that position, was

6 called upon to review a great number of

7 personnel requests, which I found took up a

8 lot of my time at the expense of other

9 things that I needed to do. I needed

10 assistance in reviewing these. I expected

11 that the committee process would weed out

12 some of those and that they might have

13 recommendations in other regards regarding

14 other positions. I did not charge them or

15 expect them to approve any particular

16 position, and I may take an action on a

17 position without consulting the job

18 evaluation committee if I've already

19 reached a conclusion that this job is

20 needed or whatever action is needed.

21 Q. Well, in this case you approved the  
22 specifications for the position of  
23 Departmental Assistant Personnel Manager?

1 A. Yes.

2 Q. And my question is, would you approve those  
3 specifications irrespective of how the job  
4 evaluation committee felt about the  
5 specifications?

6 MR. NIX: Object to the form.

7 A. Hypothetical, but probably, yes.

8 Q. And the reason I asked, to be totally  
9 honest with you, is because I've heard that  
10 they approved it and I heard that they  
11 didn't approve it. And so assuming that  
12 they didn't approve it, I just wanted to  
13 know would you have still approved the job  
14 specs --

15 MR. NIX: He's answered --

16 Q. -- and your answer I understand is, yes,  
17 you would have?

18 A. Yes.

19 Q. Plaintiffs' Exhibit 18 I'm showing you now,  
20 which was also marked as Plaintiffs'  
21 Exhibit 51 in another deposition just for  
22 the record, is that your signature on  
23 Plaintiffs' Exhibit 18?



Deposition of John M. Houston

June 26, 2008

Page 158

1 A. It is.  
 2 Q. And that's where you approved the creation  
 3 of Departmental Assistant Personnel  
 4 Manager?  
 5 A. Yes.  
 6 Q. Do you know -- We have several documents  
 7 here. We have a draft of a notice dated  
 8 May 27, '05. We have a memo to state  
 9 personnel dated February 3rd. We have a  
 10 memo from Henry Ervin to you dated June  
 11 14th. And we have Plaintiffs' Exhibit 18.  
 12 Do you know when you approved the  
 13 specifications for the position of  
 14 Departmental Assistant Personnel Manager?  
 15 MR. NIX: Do you mean when he  
 16 signed that document or when  
 17 he approved --  
 18 Q. When you approved the specifications.  
 19 A. Not specifically, no.  
 20 Q. Because I don't have the benefit of a  
 21 document saying I approved the  
 22 specifications on X, Y day. That's why I'm  
 23 asking, do you know when you approved them?

Page 159

1 A. Well, they're certainly approved in  
 2 principle verbally before there was any  
 3 document at all. And I suspect that the  
 4 process went through different stages and  
 5 then different documents at different  
 6 stages there. But when specifically --  
 7 This is not dated with my signature, but  
 8 Otha's is June 12th, I believe. And I'm  
 9 confident that it was right around that  
 10 date. Now, had I had prior discussions  
 11 with him or others about the position and  
 12 given some sort of level of, yes, that's  
 13 something we need to move forward on, yes,  
 14 go do some research, yes, go check with  
 15 state personnel and see about whatever we  
 16 need there, if there's -- you know, get  
 17 that out of the way. So there may have  
 18 been different stages at which I approved  
 19 different things in that process. The  
 20 actual approval of stamped with finality,  
 21 if you will, I suppose that's about as  
 22 close as we'll have because that's the one  
 23 that would be used to process it.

Page 160

1 Q. Let me show you what's been marked  
 2 Plaintiffs' Exhibit 42. I should say  
 3 previously marked. Have you seen that  
 4 document before?  
 5 A. I don't recall it specifically, but I  
 6 suspect that I have.  
 7 Q. Do you know Marilyn Benson typed that  
 8 document, Plaintiffs' Exhibit 42?  
 9 A. Well, I'm beginning to expect that with  
 10 anything you put in front of me. But prior  
 11 to this, no.  
 12 Q. Well, the fact that you're learning that  
 13 now, that Marilyn Benson typed the notice,  
 14 that Marilyn Benson typed the job specs,  
 15 that Marilyn Benson typed the letter from  
 16 Henry Ervin to you requesting that the job  
 17 be established, that Marilyn Benson typed  
 18 the memorandum to the Alabama -- well, to  
 19 the State Personnel Department requesting  
 20 the job code and pay range, the fact that  
 21 you know that now, does that cause you to  
 22 doubt in any way whether the job  
 23 specifications for the position of

Page 161

1 Departmental Assistant Personnel Manager  
 2 were prepared to give Marilyn Benson a  
 3 competitive advantage?  
 4 MR. NIX: Object to the form.  
 5 A. It does not concern me based on information  
 6 I have at this moment. The reason for that  
 7 is I think the job specs are appropriate  
 8 and the process was a good process.  
 9 Q. Well, did you approve the -- Well, if the  
 10 process was a good process, why did you  
 11 advertise the job twice?  
 12 A. To make sure that we had the benefit of a  
 13 broad distribution of the announcement and  
 14 that if there were others who would meet  
 15 those qualifications that they could apply.  
 16 Q. Did you not get enough applications the  
 17 first time?  
 18 A. I don't recall the numbers. It's very well  
 19 possible that that's the case, but I don't  
 20 recall the numbers.  
 21 Q. Well, who made the decision to advertise it  
 22 a second time?  
 23 A. Otha and I discussed it. And I don't know

Deposition of John M. Houston

June 26, 2008

Page 162

1 if he came forward and said let's do that  
 2 or if I said let's do that. I'm not sure.  
 3 Very well could have been me.  
 4 Q. Well, the reasons that you just gave as to  
 5 why it was advertised a second time, were  
 6 those your reasons or reasons proposed by  
 7 Otha Dillihay?  
 8 A. I don't remember. I suspect that both of  
 9 us probably were thinking that, but I'm  
 10 not -- I don't recall.  
 11 Q. Well, the second time it was advertised,  
 12 did you broaden the -- broaden the notice?  
 13 In other words, did you ask it to be -- the  
 14 notice to be given through any different  
 15 channels such as through different  
 16 newspapers or by sending it to different  
 17 facilities that you hadn't already done the  
 18 first time?  
 19 A. There were several discussions at different  
 20 stages about that. And I know at one,  
 21 which is probably when it was expanded, I  
 22 believe that the announcement was  
 23 distributed within the department or the

Page 163

1 department -- the mental health system and  
 2 that it was broadened to include the state  
 3 system, which would have brought in --  
 4 which provided notice to people in other  
 5 departments that may not have received the  
 6 notice the first go-around.  
 7 Q. The preference for the master's degree that  
 8 is reflected in the job notice that's been  
 9 marked Plaintiffs' Exhibit 42, whose idea  
 10 was that to give that as a preference?  
 11 A. I don't recall specifically.  
 12 Q. That wasn't your idea?  
 13 A. It may have been. You know, I support it.  
 14 But I don't recall who first brought that  
 15 out.  
 16 Q. And you support putting that preference  
 17 in --  
 18 A. As a preference, yes.  
 19 Q. -- even though it's not in the job  
 20 specification?  
 21 A. That's correct.  
 22 Q. Job specifications don't require a master's  
 23 degree?

Page 164

1 A. Some do. Some don't.  
 2 Q. But you're aware that the job  
 3 specifications that we're here today on  
 4 this lawsuit don't require a master's  
 5 degree, do they?  
 6 MR. NIX: You're talking about the  
 7 assistant personnel manager  
 8 does not require a master's  
 9 degree; is that right? Is  
 10 that what you're asking him?  
 11 MR. MOZINGO: (Nods head).  
 12 MR. NIX: Yes?  
 13 A. Yes, I'm aware.  
 14 Q. And you're aware of that, but you still  
 15 recommended or approved that the job  
 16 announcement contain a preference for a  
 17 master's degree?  
 18 A. Yes.  
 19 Q. Was that done to discourage people from  
 20 applying?  
 21 A. No. That's done to help us to obtain the  
 22 best qualified, best person for the  
 23 position.

Page 165

1 Q. And you're confident and it's your position  
 2 today that Marilyn Benson is the best  
 3 person -- best qualified person for that  
 4 position?  
 5 MR. NIX: Object to the form  
 6 again. It's the same question  
 7 you asked him before, which is  
 8 universal in scope and doesn't  
 9 relate -- have a relationship  
 10 to anything.  
 11 MR. MOZINGO: What universe?  
 12 MR. NIX: How many are there?  
 13 A. The best person among the applicants, yes.  
 14 Q. Do you know who that -- Well, you told me  
 15 you didn't know who the applicants were;  
 16 right?  
 17 A. (Witness nods head). That's correct.  
 18 Q. So you don't know if she's the best person  
 19 among the applicants, do you?  
 20 MR. NIX: Object to the form.  
 21 A. I know that the process was designed to  
 22 address that, and I'm confident in the  
 23 process. Now, different people can have

Deposition of John M. Houston

June 26, 2008

Page 166	Page 168
<p>1 different opinions about who the best</p> <p>2 qualified person is for one thing or</p> <p>3 another and they're entitled to their</p> <p>4 opinions.</p> <p>5 Q. Can the process ever be front-loaded?</p> <p>6 A. I don't know what that means.</p> <p>7 Q. In the sense that job specs or job</p> <p>8 announcement can be given to where only</p> <p>9 preselected people are going to qualify</p> <p>10 when that position is announced and the</p> <p>11 interviews are conducted by third parties?</p> <p>12 MR. NIX: I'm sorry, Flynn. I</p> <p>13 just really lost you on that.</p> <p>14 Would you mind saying it</p> <p>15 again?</p> <p>16 Q. Can the process be front-loaded?</p> <p>17 MR. NIX: Well, again, define it</p> <p>18 because we want to make sure</p> <p>19 we understand what you mean.</p> <p>20 Q. Well, let's say in this case. I've heard</p> <p>21 you talk about the process of a third</p> <p>22 party -- third party were involved?</p> <p>23 A. Could it be engineered to meet --</p>	<p>1 comparing minimum qualifications with that</p> <p>2 contained in the notice, the fact all of</p> <p>3 that occurred and Marilyn Benson got the</p> <p>4 job is just purely coincidental; is that</p> <p>5 correct?</p> <p>6 MR. NIX: I object to the form</p> <p>7 as being -- anything being</p> <p>8 pure coincidental. Object</p> <p>9 to the form.</p> <p>10 A. I'm not even sure what coincidental means</p> <p>11 in this regard. It does not concern me</p> <p>12 because I am confident that the</p> <p>13 specifications are appropriate and the</p> <p>14 process was fair.</p> <p>15 Q. Do you know the response -- the final</p> <p>16 response of the Equal Employment</p> <p>17 Opportunity Commission to the claim filed</p> <p>18 by Joan Owens and Lynn Hubbard?</p> <p>19 A. I'm aware there were two different</p> <p>20 responses at two different times that were</p> <p>21 contradictory.</p> <p>22 Q. And I'm asking about the last response. I</p> <p>23 said final.</p>
Page 167	Page 169
<p>1 Q. Could it be engineered, correct.</p> <p>2 A. Is it possible?</p> <p>3 Q. Yes.</p> <p>4 A. It's possible with the complicity of the</p> <p>5 associate commissioner and the</p> <p>6 commissioner.</p> <p>7 Q. So it is possible, then?</p> <p>8 A. It is possible.</p> <p>9 Q. Did you and Otha Dillihay and Henry Ervin</p> <p>10 conspire to put Marilyn Benson in the</p> <p>11 position of Departmental Assistant</p> <p>12 Personnel Manager?</p> <p>13 A. No.</p> <p>14 Q. Did you conspire to front-load the process</p> <p>15 where she would get the job?</p> <p>16 A. No.</p> <p>17 Q. Are you sure?</p> <p>18 A. Totally. Absolutely. With absolute</p> <p>19 certainty. No.</p> <p>20 Q. The fact that Marilyn Benson did the</p> <p>21 research for the job, that she typed all of</p> <p>22 these documents, that she received a</p> <p>23 perfect score on the evaluation sheet</p>	<p>1 A. I understand they in some fashion upheld</p> <p>2 the complaint.</p> <p>3 Q. In some fashion. Do you understand that</p> <p>4 they found there was probable cause to</p> <p>5 believe that Marilyn -- excuse me --</p> <p>6 Joan -- It's getting late in the day. And</p> <p>7 I warned you ahead of time that I would do</p> <p>8 this, so I apologize.</p> <p>9 You understand that their final</p> <p>10 response was that there was probable cause</p> <p>11 to believe that Joan Owens and Lynn Hubbard</p> <p>12 had been discriminated against?</p> <p>13 MR. NIX: I object to the form.</p> <p>14 A. I understand they upheld the complaint in</p> <p>15 some fashion. I don't know the specific</p> <p>16 language of their findings.</p> <p>17 Q. Did that concern you in any way that, to</p> <p>18 use your language or your wording, they</p> <p>19 upheld the complaint?</p> <p>20 A. Of course it concerns me if they uphold the</p> <p>21 complaint. But it doesn't concern me that</p> <p>22 the process or the specifications are</p> <p>23 inappropriate or unfair.</p>

Deposition of John M. Houston

June 26, 2008

Page 170	Page 172
<p>1 Q. Let me show you what's previously been</p> <p>2 marked Plaintiffs' Exhibit 22. Do you know</p> <p>3 what that is?</p> <p>4 A. Minutes of the job evaluation committee</p> <p>5 February 24th, '05.</p> <p>6 Q. And if you'll flip to the second page, you</p> <p>7 will see that the job evaluation committee</p> <p>8 approved Jim Elliott receiving a promotion</p> <p>9 using substitution; correct?</p> <p>10 MR. NIX: I object to the form by</p> <p>11 the way.</p> <p>12 MR. MOZINGO: That's fine.</p> <p>13 A. Okay. That's what it says.</p> <p>14 Q. That's what it says. And, in fact, you</p> <p>15 approved that, didn't you? Let me show you</p> <p>16 Plaintiffs' Exhibit 23.</p> <p>17 A. Looks like it.</p> <p>18 Q. You approved it; correct?</p> <p>19 A. Uh-huh (positive response).</p> <p>20 Q. And Jim Elliott received a promotion from</p> <p>21 Personnel Specialist III, pay grade 75, to</p> <p>22 Personnel Manager III, pay grade 82, using</p> <p>23 substitution; correct?</p>	<p>1 A. Uh-huh (positive response).</p> <p>2 Q. You understand that; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you understand that Marilyn</p> <p>5 Benson went from a pay grade 75 to a pay</p> <p>6 grade 80 --</p> <p>7 A. If you say so.</p> <p>8 Q. -- using job specs and job qualifications</p> <p>9 that did not allow substitution. Isn't</p> <p>10 that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you approved -- you approved Jim</p> <p>13 Elliott going from a pay grade 75 to a pay</p> <p>14 grade 82 using substitution, didn't you?</p> <p>15 A. If that's what it says.</p> <p>16 Q. Now, is that fair?</p> <p>17 MR. NIX: I object to the form of</p> <p>18 that. That's argumentative</p> <p>19 and I don't --</p> <p>20 Q. Is that fair that Marilyn Benson can</p> <p>21 compete for a job where there's no</p> <p>22 substitution and Joan Owens and Lynn</p> <p>23 Hubbard can't compete, but Jim Elliott can</p>
Page 171	Page 173
<p>1 A. Uh-huh (positive response).</p> <p>2 Q. Is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And you approved that?</p> <p>5 A. That is correct.</p> <p>6 Q. And you approved it in March 2005?</p> <p>7 A. If that's what it says, yes.</p> <p>8 Q. Now, the department -- the position of</p> <p>9 Departmental Assistant Personnel Manager is</p> <p>10 a pay grade 80; correct?</p> <p>11 A. I believe so.</p> <p>12 Q. I'll represent to you it is. We can dig</p> <p>13 back through, but it's --</p> <p>14 A. That's fine. That's true.</p> <p>15 Q. And Jim Elliott was able to go -- Well, let</p> <p>16 me back up. Are you aware that the</p> <p>17 position of Personnel Specialist III is</p> <p>18 also a pay grade 75?</p> <p>19 A. I'm not familiar with that.</p> <p>20 Q. Well, it's right here. See?</p> <p>21 A. I see that.</p> <p>22 Q. And Joan Owens and Lynn Hubbard and Marilyn</p> <p>23 Benson were all Personnel Specialists III?</p>	<p>1 for even a higher pay grade using</p> <p>2 substitution?</p> <p>3 MR. NIX: Let me object to the</p> <p>4 form of the question in that</p> <p>5 it's argumentative and that it</p> <p>6 takes into consideration two</p> <p>7 completely separate and</p> <p>8 different situations that are</p> <p>9 not necessarily comparable at</p> <p>10 all. Object to the form.</p> <p>11 MR. MOZINGO: No, they're not</p> <p>12 comparable.</p> <p>13 Q. This is a higher position, isn't it?</p> <p>14 Personnel Manager III, pay grade 82, that</p> <p>15 is a higher position, isn't it?</p> <p>16 MR. NIX: I object to the form of</p> <p>17 the question.</p> <p>18 Q. Isn't it, Commissioner Houston?</p> <p>19 MR. NIX: Excuse me. If you don't</p> <p>20 mind, Flynn. I object to the</p> <p>21 form. I object to the form of</p> <p>22 the question in that it seeks</p> <p>23 to compare two separate and</p>



Deposition of John M. Houston

June 26, 2008

Page 174	Page 176
<p>1 different people in two</p> <p>2 separate and different</p> <p>3 situations.</p> <p>4 MR. MOZINGO: Okay. Objection</p> <p>5 noted.</p> <p>6 MR. NIX: It's not a fair</p> <p>7 comparison if you're talking</p> <p>8 about fair. But I object also</p> <p>9 to a question about what's</p> <p>10 fair because I also think that</p> <p>11 that is an objectionable</p> <p>12 question.</p> <p>13 MR. MOZINGO: Your objection is</p> <p>14 noted. Thank you very much.</p> <p>15 Q. Is that fair, Commissioner Houston?</p> <p>16 MR. NIX: I object to the form.</p> <p>17 I'm not sure -- I'm not even</p> <p>18 sure you can --</p> <p>19 MR. MOZINGO: Are you instructing</p> <p>20 him not to answer?</p> <p>21 MR. NIX: I may. I may. I'm</p> <p>22 thinking about it because</p> <p>23 the word -- because what's</p>	<p>1 positions and that's all</p> <p>2 you're looking at. I think</p> <p>3 it's an objectionable</p> <p>4 question.</p> <p>5 MR. MOZINGO: All right, Chip. I</p> <p>6 understand. You're repeating</p> <p>7 yourself. I understand.</p> <p>8 MR. NIX: You are too.</p> <p>9 MR. MOZINGO: Are you going to</p> <p>10 instruct him not to answer?</p> <p>11 MR. NIX: I may.</p> <p>12 MR. MOZINGO: Are you? Because</p> <p>13 I'm going to ask the question</p> <p>14 again. Are you going to</p> <p>15 instruct him not to answer?</p> <p>16 And I'm going to ask it again</p> <p>17 with your objection noted so</p> <p>18 we don't have to repeat it.</p> <p>19 MR. NIX: Go ahead.</p> <p>20 A. Substitution is not prohibited. It's</p> <p>21 allowed under certain circumstances. Every</p> <p>22 circumstance is unique and should be</p> <p>23 considered. And I don't know all the</p>
Page 175	Page 177
<p>1 fair based on what you're</p> <p>2 giving him --</p> <p>3 MR. MOZINGO: Let me ask him this</p> <p>4 way.</p> <p>5 Q. In your opinion, Commissioner Houston, is</p> <p>6 that fair?</p> <p>7 MR. NIX: I object to the form of</p> <p>8 the question. It's the same</p> <p>9 question.</p> <p>10 MR. MOZINGO: Well, it's his</p> <p>11 opinion.</p> <p>12 MR. NIX: Well, I object. You're</p> <p>13 not giving him much</p> <p>14 information there. You're not</p> <p>15 giving him -- you know, you're</p> <p>16 just not -- the question is</p> <p>17 objectionable. The word fair</p> <p>18 is a very subjective question,</p> <p>19 and the situations are</p> <p>20 themselves different along</p> <p>21 with the people and everything</p> <p>22 else. All you're doing is</p> <p>23 taking the pay grades and the</p>	<p>1 circumstances surrounding that particular</p> <p>2 recommendation.</p> <p>3 (Plaintiffs' Exhibit 101 was marked</p> <p>4 for identification.)</p> <p>5 Q. Let me show you what's been marked</p> <p>6 Plaintiffs' Exhibit 101. This is the job</p> <p>7 spec for Personnel Manager I, range 75.</p> <p>8 Flip over there. Does it allow</p> <p>9 substitution?</p> <p>10 MR. NIX: What exhibit is it,</p> <p>11 please?</p> <p>12 MR. MOZINGO: Plaintiffs' Exhibit</p> <p>13 101.</p> <p>14 A. That's what it says.</p> <p>15 Q. And that's your job spec; right?</p> <p>16 A. My job spec?</p> <p>17 Q. Yes.</p> <p>18 A. Meaning within the Department of Mental</p> <p>19 Health?</p> <p>20 Q. It's a job spec of the Department of Mental</p> <p>21 Health and you are the commissioner of the</p> <p>22 Department of Mental Health; correct?</p> <p>23 A. That's correct.</p>



Deposition of John M. Houston

June 26, 2008

Page 178

1 Q. And that's your job spec; correct?

2 A. That's a job spec for a Personnel Manager I

3 within the Department of Mental Health and

4 Mental Retardation.

5 Q. And that allows substitution?

6 A. Uh-huh (positive response).

7 (Plaintiffs' Exhibit 102 was marked

8 for identification.)

9 Q. Let's look at Plaintiffs' Exhibit 102.

10 Personnel Manager II, range 75. Look at

11 the back. Does it allow substitution?

12 A. Uh-huh (positive response).

13 Q. And that's your job spec; correct?

14 A. That's correct.

15 (Plaintiffs' Exhibit 103 was marked

16 for identification.)

17 Q. Look at Plaintiffs' Exhibit 103. Personnel

18 Manager III, pay range 82. Look at the

19 back. Does it allow substitution?

20 A. That's what it says.

21 Q. And that's your job spec; correct?

22 A. Correct.

23 Q. Is that an important classification?

Page 179

1 A. All the classifications are important.

2 Q. Is Personnel Manager II a highly

3 responsible professional management

4 position?

5 A. That's subjective and depends on who you

6 talk with. I consider all the positions

7 important.

8 Q. Well, that's what your classification

9 says. Do you disagree with that?

10 A. No.

11 MR. NIX: I'm sorry. What were

12 you quoting the classification

13 said?

14 THE WITNESS: He was reading the

15 first sentence of --

16 MR. MOZINGO: Plaintiffs' Exhibit

17 103.

18 Q. And Personnel Manager II; right? Highly

19 responsible professional personnel

20 management job; is that correct?

21 A. That's what it says.

22 Q. Well, is that correct?

23 A. I consider all the positions to be

Page 180

1 important.

2 Q. Because it's your policy?

3 A. Right.

4 Q. And it allows substitution?

5 MR. NIX: Are you arguing now?

6 MR. MOZINGO: Well, no. That's

7 what the exhibit says.

8 MR. NIX: No. You're arguing

9 now. Slow down.

10 (Plaintiffs' Exhibit 104 was marked

11 for identification.)

12 Q. Well, let me show you Plaintiffs' Exhibit

13 104. Personnel Management IV, pay range

14 85. Does it allow substitution?

15 A. That's what it says.

16 Q. Well, does it? Do you know, Commissioner

17 Houston?

18 A. I'm not familiar with every classification,

19 every personnel -- every position, and have

20 not reviewed these. And you're presenting

21 them as those job specs, and I see that

22 substitution is allowed on these documents.

23 Q. Let me ask you a question. Let's find

Page 181

1 Departmental Assistant Personnel Manager

2 right here. Here it is. Plaintiffs'

3 Exhibit 19. Pay range 80. Qualifications

4 do not allow a substitution. Plaintiffs'

5 Exhibit 104, Personnel Manager IV, pay

6 range 85, allows substitution. Is there

7 any inconsistency to you by the fact that

8 we have a job in a lower range that does

9 not allow substitution whereas a job in a

10 higher range does?

11 A. It may be one reason that we need to update

12 our wage and class study to look at issues

13 of that type. But I don't know

14 specifically about those particular jobs.

15 Q. Well, should you have considered, in the

16 creation of the position of Departmental

17 Assistant Personnel Manager, whether that

18 job could be filled using an existing

19 classification?

20 MR. NIX: Object to the form.

21 He's already answered that.

22 A. That would be an option.

23 Q. Did you consider that option?

Deposition of John M. Houston

June 26, 2008

Page 182

1 A. No.  
 2 Q. Should you have considered that option?  
 3 MR. NIX: I object to the form of  
 4 that as to whether he should  
 5 have.  
 6 A. It's subjective. Each person can form  
 7 their own opinion.  
 8 MR. NIX: Excuse me. I need to  
 9 tell Katie something real  
 10 quick  
 11 MR. MOZINGO: Can I ask one  
 12 question before you go?  
 13 MR. NIX: Sure.  
 14 Q. In your case where you formed your opinion,  
 15 was it subjective?  
 16 A. I'm sorry. About what?  
 17 Q. You said it could be subjective.  
 18 MR. MOZINGO: I'll let her read  
 19 the answer back.  
 20 MR. TARVER: Read the question  
 21 first.  
 22 (Requested portion of the record  
 23 was read by the Reporter.)

Page 183

1 Q. And you formed your opinion in this case;  
 2 correct?  
 3 MR. NIX: What are you asking him  
 4 now?  
 5 A. In the case regarding the assistant  
 6 personnel manager?  
 7 Q. Yeah. Correct. Well, actually, just  
 8 strike that. Let your attorney take his  
 9 break. Strike that. We'll come back to  
 10 it.  
 11 (Brief recess was taken.)  
 12 (Plaintiffs' Exhibit 105 was marked  
 13 for identification.)  
 14 Q. Commissioner Houston, let me show you what  
 15 I've marked Plaintiffs' Exhibit 105.  
 16 That's a page from your web site -- or the  
 17 Department of Mental Health's web site;  
 18 correct?  
 19 A. Correct.  
 20 Q. Is that your picture up in the right-hand  
 21 corner?  
 22 A. I'm afraid so. A lot of airbrushing  
 23 involved.

Page 184

1 Q. That web page is talking about --  
 2 Plaintiffs' Exhibit 105, Commissioner  
 3 Houston, that's talking about employment  
 4 opportunities -- the web page is talking  
 5 about employment opportunities with your  
 6 administration -- I'm sorry -- with your  
 7 department?  
 8 A. Correct.  
 9 Q. And it says that we are proud of our  
 10 department and what it has to offer  
 11 prospective employees. Competitive  
 12 salaries, excellent fringe benefits, fair  
 13 employment practices, and opportunities for  
 14 continuing your career growth are just a  
 15 few of the advantages of working in our  
 16 system. Is that true?  
 17 A. True.  
 18 Q. And you-all have fair employment practices?  
 19 A. I believe so.  
 20 Q. Do you believe that objectively or  
 21 subjectively?  
 22 A. Both.  
 23 (Plaintiffs' Exhibit 84 was marked

Page 185

1 for identification.)  
 2 Q. Let me show you what I'm marking  
 3 Plaintiffs' Exhibit 84. Nursing Home  
 4 Administrator I, range 79. Is that the job  
 5 specs for that position?  
 6 A. It appears to be.  
 7 Q. And that's a responsible professional  
 8 managerial job in a facility operated by  
 9 the Department of Mental Health; correct?  
 10 A. Correct.  
 11 Q. And that position allows substitution, does  
 12 it not?  
 13 A. That's what it says.  
 14 Q. Did you look and see?  
 15 A. Yes.  
 16 (Plaintiffs' Exhibit 85 was marked  
 17 for identification.)  
 18 Q. Plaintiffs' Exhibit 85. Nursing Home  
 19 Administrator II, that's a highly  
 20 responsible professional managerial job;  
 21 correct?  
 22 A. That's what it says.  
 23 Q. And it allows substitution, does it not?

Page 186	Page 188
<p>1 A. That is correct.</p> <p>2 MR. NIX: I tell you what, Flynn,</p> <p>3 I mean, if it's got a Bates</p> <p>4 number on it, the document</p> <p>5 speaks for itself. We have no</p> <p>6 problem with you -- All it is</p> <p>7 is reading. It's stuff we've</p> <p>8 produced if it's got a Bates</p> <p>9 sticker on it. Therefore, it</p> <p>10 is what it is, says what it</p> <p>11 says. No matter what you ask</p> <p>12 him it's going to be the same</p> <p>13 answer depending on what the</p> <p>14 document says. So why go</p> <p>15 through all this stuff? We</p> <p>16 would stipulate that those are</p> <p>17 what they are. Really.</p> <p>18 (Plaintiffs' Exhibit 86 was marked</p> <p>19 for identification.)</p> <p>20 Q. Plaintiffs' Exhibit 86, the job specs for</p> <p>21 Administrator III. They allow</p> <p>22 substitution; correct?</p> <p>23 A. That's what it says.</p>	<p>1 substitution, do they not?</p> <p>2 A. Correct.</p> <p>3 (Plaintiffs' Exhibit 91 was marked</p> <p>4 for identification.)</p> <p>5 Q. Plaintiffs' Exhibit 91, Assistant Facility</p> <p>6 Director. And I emphasize the word</p> <p>7 assistant. Pay range 83. Your job specs</p> <p>8 allow substitution, don't they?</p> <p>9 A. Correct.</p> <p>10 (Plaintiffs' Exhibit 92 was marked</p> <p>11 for identification.)</p> <p>12 Q. Plaintiffs' Exhibit 92, Staff Development</p> <p>13 Specialist, pay range 80. Same pay range</p> <p>14 Marilyn Benson currently has with her job.</p> <p>15 Job specs allow substitution, don't they?</p> <p>16 A. Correct.</p> <p>17 (Plaintiffs' Exhibit 93 was marked</p> <p>18 for identification.)</p> <p>19 Q. Plaintiffs' Exhibit 93, Director of</p> <p>20 Residential Services, also pay range 80.</p> <p>21 Your job specs allow substitution, don't</p> <p>22 they?</p> <p>23 A. Correct.</p>
Page 187	Page 189
<p>1 (Plaintiffs' Exhibit 87 was marked</p> <p>2 for identification.)</p> <p>3 Q. Plaintiffs' Exhibit 87, position of</p> <p>4 Administrator IV allows substitution;</p> <p>5 correct?</p> <p>6 A. Uh-huh (positive response).</p> <p>7 (Plaintiffs' Exhibit 88 was marked</p> <p>8 for identification.)</p> <p>9 Q. Plaintiffs' Exhibit 88, Administrator V</p> <p>10 position with your department allows</p> <p>11 substitution; correct?</p> <p>12 A. Correct.</p> <p>13 (Plaintiffs' Exhibit 89 was marked</p> <p>14 for identification.)</p> <p>15 Q. Plaintiffs' Exhibit 89, Administrator VI,</p> <p>16 job spec for your department or your agency</p> <p>17 allows substitution; correct?</p> <p>18 A. Correct.</p> <p>19 (Plaintiffs' Exhibit 90 was marked</p> <p>20 for identification.)</p> <p>21 Q. Plaintiffs' Exhibit 90, Health Facilities</p> <p>22 Manager, an advanced professional</p> <p>23 administrative job. The job specs allow</p>	<p>1 Q. Now, my question is, I have shown you the</p> <p>2 job specs for -- I've shown you the job</p> <p>3 specs for at least 14 positions in your</p> <p>4 agency, professional positions with pay</p> <p>5 ranges much higher than the position of</p> <p>6 Departmental Assistant Personnel Manager</p> <p>7 all allowing substitution, whereas the job</p> <p>8 held by Marilyn Benson does not allow</p> <p>9 substitution even though these ladies to my</p> <p>10 left, Ms. Owens and Ms. Hubbard, requested</p> <p>11 that it did so they could apply. Okay. My</p> <p>12 question is, if you have fair employment</p> <p>13 practices as you state on your web site,</p> <p>14 what's fair about that?</p> <p>15 MR. NIX: I object to the form of</p> <p>16 the question. I object to the</p> <p>17 form. It's the same objection</p> <p>18 I have previously made about</p> <p>19 you're showing him a bunch of</p> <p>20 specifications.</p> <p>21 Q. Can you answer my question?</p> <p>22 MR. NIX: It's a hypothetical</p> <p>23 question actually. It doesn't</p>

Deposition of John M. Houston

June 26, 2008

Page 190

1 relate to a specific  
2 individual, specific  
3 situation, specific set of  
4 circumstances, so I object to  
5 the form.  
6 A. We have over 2,800 employees, hundreds of  
7 classifications and positions. Many of  
8 them have substitution clauses. Others do  
9 not. We're engaged in a review of the wage  
10 and class system. Those are some of the  
11 issues that would be considered and  
12 addressed there.  
13 Q. But when this job was created, you didn't  
14 have a wage and class review going on;  
15 correct?  
16 A. Correct.  
17 Q. When this job was created, you had all of  
18 these existing positions?  
19 A. And others.  
20 Q. And others that allow substitution?  
21 A. Some do. Some don't.  
22 Q. That's correct. And so when -- Well, let  
23 me think about that, Commissioner Houston.

Page 191

1 Do you have a standard at your agency at  
2 the Department of Mental Health to ensure  
3 the consistent use of the substitution  
4 clause among positions?  
5 MR. NIX: Object to the form of  
6 the question.  
7 A. As to say -- I'm not sure what you mean.  
8 Q. Well, you just testified some do and some  
9 don't, and I'm just asking do you have some  
10 standard to know when it should and when it  
11 shouldn't?  
12 A. Each position -- No. Each position needs  
13 to be looked at individually.  
14 Q. Is that what happened here?  
15 A. I think so.  
16 Q. Let me show you what's previously been  
17 marked Plaintiffs' Exhibit 28. It's the  
18 job evaluation committee meeting minutes  
19 concerning Christopher Vilamaa when he  
20 obtained the position of Administrator V.  
21 Do you see those minutes? It's the second  
22 item.  
23 MR. NIX: What's the date on that?

Page 192

1 MR. MOZINGO: January 12th, 2006.  
2 A. Okay.  
3 Q. According to that exhibit, Christopher  
4 Vilamaa was able to obtain a position as  
5 Administrator V using substitution;  
6 correct?  
7 A. Yes.  
8 Q. You see down at the bottom it says a vote  
9 was taken and the request was approved by  
10 unanimous vote.  
11 A. Correct.  
12 Q. And did you approve Christopher Vilamaa  
13 obtaining the rank of Administrator V?  
14 A. I don't recall specifically doing that, but  
15 I'm sure that I did.  
16 Q. And I previously showed you the job specs  
17 for Administrator V earlier today. And I  
18 can show them to you again, but I'll  
19 represent to you that it was a pay range  
20 80, same pay range as Marilyn Benson's  
21 current job as Assistant Departmental  
22 Personnel Manager. And it was a job  
23 described of -- described as requiring

Page 193

1 advanced professional administrative work  
2 of extensive scope and complexity. And  
3 Mr. Vilamaa was able to obtain that job  
4 using substitution approximately the same  
5 time Marilyn Benson obtained her job  
6 without the utilization of substitution for  
7 anyone who wanted to apply for the job and  
8 didn't meet the minimum specs. Now, in  
9 your opinion, is that fair?  
10 MR. NIX: I object to the form of  
11 the question. Same objection  
12 as before.  
13 A. They're separate positions to be considered  
14 individually, so I don't know.  
15 Q. You testified that Lynn Hubbard came and  
16 talked to you and voiced her concerns?  
17 A. On two occasions.  
18 Q. On two occasions. And you know that she  
19 wanted to apply for the job. You've told  
20 me that?  
21 A. Subsequently, yes.  
22 Q. Okay. Subsequently. And she didn't apply  
23 because substitution wasn't allowed. You



Deposition of John M. Houston

June 26, 2008

Page 194

1 understand that; correct?

2 MR. NIX: I object to the form of  
3 that.

4 MR. MOZINGO: Well, it's in the  
5 complaint. She alleges that.

6 MR. NIX: So you've changed your  
7 question. Does he know she  
8 alleges that?

9 Q. Do you know that?

10 A. That she did not apply because it was not  
11 substitution?

12 Q. Correct.

13 A. I assumed that, but I don't know. At some  
14 point I realized that, so --

15 Q. Well, you realized she did not or could  
16 not --

17 A. Yes.

18 Q. -- because there was no substitution?

19 A. Yes.

20 Q. Do you think it was fair to Lynn Hubbard  
21 that she couldn't apply for the job  
22 currently held by Marilyn Benson?

23 MR. NIX: Again, object to the

Page 195

1 form. If you don't mind, I'll  
2 just say the same grounds as  
3 previous, if that's fine with  
4 you.

5 MR. MOZINGO: Same grounds.  
6 They're in the record. Same  
7 grounds.

8 A. I think that the job specs were appropriate  
9 and the process was fair.

10 Q. Even if that process excluded Lynn Hubbard  
11 who wanted to apply?

12 MR. NIX: Same objection. Object  
13 to the form.

14 Q. Still think it's fair?

15 MR. NIX: Same objection.

16 A. The fact that job specs, whether they  
17 include substitution or not, in some  
18 fashion limit the pool of applicants is not  
19 inherently unfair. And I consider -- since  
20 the job specs in my opinion were  
21 appropriate and the process in my opinion  
22 was fair, then I believe it was fair to all  
23 concerned.

Page 196

1 Q. But you did not consider that omitting  
2 substitution from the job specs for the  
3 position of Departmental Assistant  
4 Personnel Manager --

5 A. I'm sorry?

6 Q. You did not -- Commissioner Houston, did  
7 you ever consider whether the omission of  
8 the substitution clause from the job specs  
9 of Departmental Assistant Personnel Manager  
10 would be inconsistent with the use of the  
11 substitution clause in the 14 other  
12 positions we have discussed?

13 MR. NIX: Object to the form of  
14 the question. Same objection  
15 as to the hypothetical nature  
16 of the question.

17 A. No.

18 Q. In hindsight do you think you should have?

19 MR. NIX: Object to the form of  
20 the question. I don't think  
21 hindsight makes any  
22 difference, and I don't think  
23 he needs to answer that

Page 197

1 question. I think it's  
2 silly. I object to the form.

3 Q. Can you answer the question?

4 A. In hindsight do I --

5 Q. Do you think you should have?

6 MR. NIX: Should have what?

7 MR. MOZINGO: Can you flip back  
8 through and find it?

9 (Requested portion of the record  
10 was read by the Reporter.)

11 Q. This is the question. You said no, and I  
12 said in hindsight do you think you should  
13 have?

14 MR. NIX: I object to the form of  
15 the question as to hindsight.

16 MR. MOZINGO: We got it. I'll  
17 stipulate to it. You got your  
18 objection.

19 MR. NIX: Well, let me think about  
20 it. I'll just object to the  
21 form of the question in that  
22 it calls for hindsight, which  
23 has nothing to do with



Deposition of John M. Houston

June 26, 2008

Page 198

anything. But it also fails to put in reasonable hypothetical facts and situation and everything else. So I object to the form.

Q. Can you answer the question?

A. Should I have considered the inconsistency? Is that the question? It would have been an objection given the fact that we have hundreds of positions and classifications. I would not think that I should have for these selected positions.

Q. Do you know whether the position of Departmental Assistant Personnel Manager back when Henry Ervin had the job allowed substitution?

A. Earlier you had asked me if I was in an executive assistant position when he held that position and I said yes. I didn't know what position he held or what classification, what substitution was allowed or not allowed. So, no, I didn't

Page 199

know.

(Plaintiffs' Exhibit 94 was marked for identification.)

Q. Let me show you what's been marked Plaintiffs' Exhibit 94. Have you seen those job specs before?

A. Uh-huh (positive response).

Q. When did you see them last?

A. Last? I'm not sure. I've seen them on a number of occasions.

Q. Okay. Is that -- Are those job specs that you approved?

A. Yes.

Q. And who prepared these job specs?

A. David Bennett presented these to me. I don't know who prepared them.

Q. Has the position of manager of employee relations, the job specs which are reflected in Plaintiffs' Exhibit 94, has that position been filled?

A. It has.

Q. By whom?

A. Henry Ervin.

Page 200

Q. Are you aware that Henry Ervin worked on these job specs?

A. I'm not surprised.

Q. Was this job created for Henry Ervin?

A. No.

Q. Was Henry Ervin preselected for this job?

A. No.

Q. When did you approve these job specs?

A. A few months ago. I'm not sure exactly. I bet you have a document somewhere that I signed to approve them.

Q. I hope to get it. Don't have it today. I'd love to bring you back when I get it, but --

A. That's fine. Within the last few months.

Q. Why was this position created?

A. Why was this position created?

Q. Yes.

A. I can tell you exactly why this position was created.

Q. Tell me.

A. Sometime last year when the legislature in its infinite wisdom changed the way in

Page 201

which the schedule of salary of payment to its employees from 26 paydays to 24, it created some upheaval across the department, particularly in some of the facilities and most especially at Partlow. There were a lot of disgruntled employees. There was a lot of attention from legislators, media and others who were upset about the consequences of that change and how it was complicating the lives of a number of employees who had grown accustomed to the other schedule. And there are a variety of reasons why it was problematic for them.

I traveled to Tuscaloosa and met with, in two open forums, groups of employees at Partlow I think at one o'clock and at three o'clock so we covered different shifts. Approximately 50 to 75 employees attended each of those forums. They were -- Some of those 60 or 70 some-odd were vocal, hostile. I could use a lot of other terms. But there were a lot of upset

Deposition of John M. Houston

June 26, 2008

Page 202	Page 204
<p>1 employees. And I left that meeting --</p> <p>2 those meetings feeling that something that</p> <p>3 was -- could be -- I may have been</p> <p>4 idealistically thinking it could have been</p> <p>5 a small problem, but that we could have</p> <p>6 handled it better and dealt with some of</p> <p>7 those issues that had to do with overtime,</p> <p>8 had to do with the way in which payments</p> <p>9 were made, a lot of issues like that. And</p> <p>10 I felt that we could have handled it much</p> <p>11 better and resolved some of those issues on</p> <p>12 a lower level when they were -- initially</p> <p>13 when people had questions or concerns,</p> <p>14 whatever. And I felt that if there were</p> <p>15 someone there whose responsibility was to</p> <p>16 work with the staff to tune in, if you</p> <p>17 will, on some of those concerns as they</p> <p>18 were developing and emerging that they</p> <p>19 could be resolved more easily and without</p> <p>20 the disruption that was occurring in that</p> <p>21 case. Subsequently I met with leadership</p> <p>22 in the legislature and the state employees</p> <p>23 association to discuss this range of</p>	<p>1 positions in the department?</p> <p>2 A. No.</p> <p>3 Q. Were there any problems in the central</p> <p>4 personnel department that were a basis for</p> <p>5 the creation of Departmental Assistant</p> <p>6 Personnel Manager?</p> <p>7 A. Problems in that area?</p> <p>8 Q. Yes, sir.</p> <p>9 MR. NIX: That he's aware of?</p> <p>10 MR. MOZINGO: Yeah.</p> <p>11 A. I was aware of some concerns about the</p> <p>12 general productivity of that area. I</p> <p>13 suspect that may have contributed to the</p> <p>14 decision about creating a new position.</p> <p>15 Q. And specifically what were your concerns?</p> <p>16 MR. NIX: I object to the form.</p> <p>17 That's really not what his</p> <p>18 answer was, but -- so I object</p> <p>19 to the form.</p> <p>20 Q. You were aware of concerns. What were the</p> <p>21 concerns you were aware of?</p> <p>22 A. Personnel actions were slow in being</p> <p>23 processed. There were questions about</p>
Page 203	Page 205
<p>1 concerns. We developed a plan to -- how to</p> <p>2 respond to a number of their concerns that</p> <p>3 were raised. One of the items that I</p> <p>4 committed to John Knight, who is the</p> <p>5 chairman of the house budget committee, the</p> <p>6 general fund committee, and was receiving a</p> <p>7 number of those complaints, I committed to</p> <p>8 him that we would create this position for</p> <p>9 that purpose that I just described. And</p> <p>10 that's how this position was created.</p> <p>11 Q. Has any legislator encouraged you to hire</p> <p>12 more blacks for the Department of Mental</p> <p>13 Health?</p> <p>14 A. Has any legislator encouraged me to hire</p> <p>15 more blacks for the Department of Mental</p> <p>16 Health? No.</p> <p>17 Q. Has any legislator pressured you?</p> <p>18 A. No.</p> <p>19 Q. Has any politician encouraged or pressured</p> <p>20 you to hire more blacks?</p> <p>21 A. No.</p> <p>22 Q. Has any legislator or politician pressured</p> <p>23 you to place more blacks in management</p>	<p>1 the -- I'm not sure about the productivity,</p> <p>2 I guess.</p> <p>3 Q. Anything else?</p> <p>4 A. That contributed to the decision about</p> <p>5 creating that position?</p> <p>6 Q. Yes, sir.</p> <p>7 A. I can't think of any.</p> <p>8 Q. Were any of those problems or concerns that</p> <p>9 you just named attributable to Joan Owens</p> <p>10 or Lynn Hubbard?</p> <p>11 A. I don't know.</p> <p>12 Q. Has anyone ever attributed any problems in</p> <p>13 central personnel to them?</p> <p>14 A. I don't recall any.</p> <p>15 Q. And how would the creation of this</p> <p>16 position, Departmental Assistant Personnel</p> <p>17 Manager, help alleviate or resolve those</p> <p>18 concerns or problems?</p> <p>19 A. Well, I'm not sure. I would think that</p> <p>20 if -- some of the concern may be in the</p> <p>21 handling of different personnel actions and</p> <p>22 managing those processes within that area</p> <p>23 to assure that things were handled</p>

Deposition of John M. Houston

June 26, 2008

Page 206

1 appropriately or in a timely manner. I  
 2 would think that would help.  
 3 Q. And who was ultimately responsible within  
 4 central personnel for those problems?  
 5 A. Well, prior to the establishment of this  
 6 position, then Mr. Ervin as the director  
 7 would have been.  
 8 Q. Well, as long as he is the director of  
 9 central personnel, he would still be  
 10 ultimately responsible within central  
 11 personnel for such problems; correct?  
 12 A. Correct.  
 13 Q. And so did you feel like those problems  
 14 could be addressed by creating a position  
 15 and promoting from within the very  
 16 department where the problems existed?  
 17 A. It would have been a factor, but not the  
 18 primary factor in creating that position.  
 19 So it was not a consideration to me as to  
 20 whether there was a hire from within or  
 21 without but rather to structure the process  
 22 to get the best person we could and to be  
 23 fair.

Page 207

1 Q. Well, if you have some problems you want to  
 2 address within a department, is it best  
 3 from a managerial perspective to hire from  
 4 outside of that department if you're trying  
 5 to address problems within the department?  
 6 A. Well, that would certainly be something to  
 7 consider. I think when we went through the  
 8 process of advertising and people applied,  
 9 we received the applicants that we received  
 10 and proceeded from there.  
 11 Q. Well --  
 12 A. It was reopened to expand that search.  
 13 Q. Could you have -- When you received the  
 14 applicants that you received, could you  
 15 have gone back and included substitution  
 16 within the job specification for the  
 17 position of Departmental Assistant  
 18 Personnel Manager and have readvertised it  
 19 allowing substitution?  
 20 A. Could.  
 21 Q. Why didn't you do that?  
 22 A. I don't recall discussing or considering  
 23 that specifically, but I don't believe that

Page 208

1 allowing for substitution of a degree would  
 2 expand the pool of eligible -- well,  
 3 eligible -- of qualified applicants.  
 4 Q. Well, it would have allowed Ms. Hubbard and  
 5 Ms. Owens to apply; correct?  
 6 A. That's correct.  
 7 Q. And it would have allowed them to have been  
 8 considered for the position; correct?  
 9 A. Correct.  
 10 Q. And I haven't told you -- I mean, you  
 11 haven't told me, but I'm going to ask you.  
 12 Maybe you've told me. I'm not sure. But  
 13 you don't feel like they could not do that  
 14 job, do you?  
 15 A. I don't feel that they could not do the  
 16 job?  
 17 Q. Right.  
 18 A. That's a double negative.  
 19 Q. I know. And I use that on my kids all the  
 20 time, double negative.  
 21 A. I would not consider a nondegreed person  
 22 for that job.  
 23 Q. You would not consider a nondegreed person

Page 209

1 for the job?  
 2 A. That is correct.  
 3 Q. Irrespective of that person's experience?  
 4 A. Correct.  
 5 Q. Are you aware of Ms. Owens' experience?  
 6 A. In a general way, yes.  
 7 Q. Are you aware that she was a personnel  
 8 manager or the personnel director for  
 9 Elmore Community Hospital?  
 10 A. I recently learned that. I didn't know  
 11 that previously.  
 12 Q. You didn't know that then; is that correct?  
 13 A. Correct.  
 14 Q. And obviously you didn't have an  
 15 opportunity to consider that back then  
 16 because she couldn't apply; correct?  
 17 MR. NIX: I object to the form of  
 18 that.  
 19 A. Correct.  
 20 Q. Are you of the opinion -- Do you have an  
 21 opinion as to whether you could have found  
 22 even -- Strike that.  
 23 Do you have an opinion as to whether

Deposition of John M. Houston

June 26, 2008

Page 210	Page 212
<p>1 applicants better qualified than Marilyn 2 Benson -- Strike that. If I'm going to ask 3 the question, I'm going to ask it right. 4 Is it possible that you could have 5 received applications from applicants who 6 were better qualified than Marilyn Benson 7 if you had allowed the position to be 8 advertised using substitution? 9 MR. NIX: Object to the form. 10 A. I don't know. 11 Q. When Ms. Hubbard came to see you on that 12 first occasion, did you have any intention 13 at that time of not allowing substitution 14 for the position of Departmental Assistant 15 Personnel Manager? 16 MR. NIX: I'm sorry. Are you 17 talking about the first time 18 she went to see him? 19 MR. MOZINGO: Yeah. I said first 20 time. First time. 21 MR. NIX: Did he have any 22 intention not to allow 23 substitution? Okay.</p>	<p>1 A. I think that's probably a fair thing to 2 say. 3 Q. And why did you replace him? 4 A. Well, a couple of things. Number one, a 5 lot of people did not trust him in the 6 community, didn't like him. Some of that 7 was historical baggage that goes back to 8 when he was first here. That was viewed by 9 me as an obstacle to accomplishing some of 10 the objectives that we had. Secondly, in 11 the life of an organization different 12 skills, different things are required at 13 different times, and I felt like we needed 14 another person with other skills in that 15 position at this time. So I asked him to 16 step down from that position. We briefly 17 discussed the possibility of other 18 positions either with our department or 19 other departments. Before we had a 20 subsequent conversation on that matter he 21 tendered his resignation. 22 Q. You said an obstacle. You talked about his 23 employment being an obstacle from when he</p>
Page 211	Page 213
<p>1 A. I don't think I had considered it at all 2 one way or another. 3 Q. Well, did you have any intention of not 4 allowing substitution for the position of 5 Departmental Assistant Personnel Manager 6 when Ms. Hubbard came to see you the second 7 time? 8 MR. NIX: Object to the form. 9 A. I had an opinion about requiring the 10 degree. So as far as substitution for a 11 degree, I would not have considered it. 12 Q. Although it is possible to do this job 13 without having a degree? 14 A. Are you asking? 15 Q. Yeah. It is possible for an individual to 16 be able to do this job without having a 17 degree? 18 A. Perhaps. 19 Q. Why did Otha Dillihay leave the Department 20 of Mental Health? 21 A. I replaced him in the position as associate 22 commissioner. 23 Q. Did he leave involuntarily?</p>	<p>1 was first here. Did he work with the 2 Department of Mental Health before? 3 A. He was appointed by the previous 4 commissioner and had been in that 5 position -- I don't know how long. Few 6 years. I'm not sure. 7 Q. You mean Kathy Sawyer? 8 A. Right. 9 Q. And how was that -- the fact that 10 Ms. Sawyer appointed him, how was that an 11 obstacle or a problem for you? 12 MR. NIX: I object to the form of 13 that. That's not what he said 14 at all. That's not even 15 close. 16 Q. Well, the fact that he had been appointed 17 by Ms. Sawyer, why did that have any 18 bearing whatsoever on your decision? 19 A. I didn't say it did. 20 MR. NIX: He didn't say it did. I 21 object to the form. 22 Q. Well, were there any problems rising 23 from -- Strike that.</p>



Deposition of John M. Houston

June 26, 2008

Page 214

1 Why did people not trust him in the  
2 community?  
3 A. There are a lot of people in the community  
4 and you would ask me to generalize about a  
5 lot of different opinions. But my  
6 observation was that at times if he were  
7 asked something that he was not sure about  
8 the answer to, he may present himself as  
9 having more knowledge than he really had.  
10 When I had asked him to serve on an interim  
11 basis as associate commissioner in the  
12 mental illness division, he presented that  
13 as a permanent assignment when it clearly  
14 was understood it was not. Now, other  
15 reasons, you know, other interaction that  
16 he had with people in the community, I'm  
17 sure there were other instances, other  
18 things that contributed to it, but I  
19 wouldn't be aware of all of those.  
20 Q. Did you find him untrustworthy?  
21 MR. NIX: I object to the form of  
22 that.  
23 A. No.

Page 215

1 Q. Did he have a reputation for being  
2 untrustworthy?  
3 A. I don't know. You know, I'm not sure I  
4 could answer that. My sense of it was that  
5 many people in the community didn't like  
6 him, and I guess I made some assumptions  
7 about what contributed to that. But I saw  
8 the perception of people in the community  
9 that didn't like him, I saw that as  
10 interfering with his ability to do the  
11 job. He was appointed with the  
12 understanding that he served at the  
13 pleasure of the commissioner. I felt like  
14 it was in the best interest of the overall  
15 organization and people we served to have  
16 someone else in that position.  
17 Q. Did you perceive of any reasons why people  
18 in the community didn't like him?  
19 A. Did I perceive? Just what I've described.  
20 Q. You said you perceived people in the  
21 community didn't like him and I was asking  
22 did you perceive any reasons for them not  
23 liking him?

Page 216

1 A. Just what I've already described.  
2 Q. Having to do with his trustworthiness?  
3 A. Having to do with him presenting himself at  
4 times as knowing more than he really did  
5 and of presenting himself as being a  
6 permanent associate in that area when it  
7 was clearly understood by me and by others  
8 in the department and the community that  
9 that was not the case.  
10 Q. Did anyone within the Department of Mental  
11 Health make any complaints about him?  
12 A. To me?  
13 Q. Yes, sir.  
14 A. Complaint about those same type things.  
15 Just didn't like him.  
16 Q. Did you like him?  
17 A. For the most part.  
18 Q. Did you feel pressured to get rid of him,  
19 then?  
20 A. No.  
21 Q. Did anyone ask you to get rid of him?  
22 A. Probably. I imagine that some people  
23 expressed dissatisfaction and the desire to

Page 217

1 make a change.  
2 Q. Anyone within the department --  
3 A. I'm sure there were.  
4 Q. -- express dissatisfaction?  
5 A. I'm sure there were.  
6 Q. Any associate commissioners?  
7 A. That were dissatisfied or that were  
8 suggesting a replacement?  
9 Q. Either.  
10 A. Some that were perhaps frustrated with  
11 particular situations or actions, yes. But  
12 that's not in and of itself particularly  
13 unusual in a large organization.  
14 Q. Any department heads?  
15 MR. NIX: Any department heads  
16 what?  
17 Q. Any department heads ask you to --  
18 A. You mean associate commissioners? What --  
19 Q. Well, I'm referring to department heads  
20 such as Henry Ervin, people of that  
21 stature.  
22 A. No.  
23 Q. Department managers, any of them ask you to



Deposition of John M. Houston

June 26, 2008

Page 218	Page 220
<p>1 get rid of him?</p> <p>2 A. I don't recall any. I mean, I -- people</p> <p>3 were at times frustrated with dealing with</p> <p>4 Otha. There was a sense that he was not</p> <p>5 particularly well-liked. I would not be</p> <p>6 surprised that at one time or another some</p> <p>7 people said something to the effect of I</p> <p>8 wish he were not there. But I don't recall</p> <p>9 anyone specifically approaching me saying</p> <p>10 you need to get rid of this fellow if</p> <p>11 that's what you're asking.</p> <p>12 Q. But you did get rid of him?</p> <p>13 A. I removed him from the position of</p> <p>14 associate commissioner of the</p> <p>15 administration. And while we were</p> <p>16 discussing other options, he chose to</p> <p>17 resign.</p> <p>18 Q. You removed him, then? Although you liked</p> <p>19 him and although you found him trustworthy,</p> <p>20 you still removed him; is that correct?</p> <p>21 A. Yes. Yes.</p> <p>22 MR. MOZINGO: All right. Let me</p> <p>23 check my notes.</p>	<p>1 the question. And also</p> <p>2 object -- I mean, it's just</p> <p>3 not relevant. But that's not</p> <p>4 something I need to object to,</p> <p>5 but it's --</p> <p>6 MR. MOZINGO: I can ask his</p> <p>7 opinion.</p> <p>8 A. Beauty or impropriety are in the eyes of</p> <p>9 the beholder.</p> <p>10 Q. And in your eyes, then?</p> <p>11 A. Does it create an appearance of</p> <p>12 impropriety, or is there impropriety?</p> <p>13 Q. In your eyes does it create an appearance</p> <p>14 of impropriety?</p> <p>15 MR. NIX: Object to the form.</p> <p>16 A. Not to me personally, but I recognize that</p> <p>17 there are those who have come to that</p> <p>18 conclusion.</p> <p>19 Q. And you've told me that there was no</p> <p>20 impropriety here in the creation and</p> <p>21 filling of that job with Marilyn Benson?</p> <p>22 A. Not to my knowledge.</p> <p>23 MR. MOZINGO: Okay. Thank you</p>
Page 219	Page 221
<p>1 (Brief recess was taken.)</p> <p>2 Q. One question. Commissioner Houston, we've</p> <p>3 discussed today that the job specs for the</p> <p>4 position of Departmental Assistant</p> <p>5 Personnel Manager were prepared by Marilyn</p> <p>6 Benson. Marilyn Benson did the research.</p> <p>7 Marilyn Benson typed the job notice.</p> <p>8 Marilyn Benson typed memorandum from Henry</p> <p>9 Ervin to you requesting that the job be</p> <p>10 established. She did a lot of work in the</p> <p>11 creation of this job and now she has the</p> <p>12 job. So my question is, in your opinion</p> <p>13 does Marilyn Benson's work regarding the</p> <p>14 establishment or the creation and</p> <p>15 establishment of the job of Assistant</p> <p>16 Department Personnel Manager create an</p> <p>17 appearance of impropriety?</p> <p>18 MR. NIX: I object to the form of</p> <p>19 the question in that it</p> <p>20 misstates some facts in</p> <p>21 evidence and it assumes some</p> <p>22 facts that are not in evidence</p> <p>23 and I object to the form of</p>	<p>1 very much.</p> <p>2 MR. NIX: Thank you.</p> <p>3 MR. MOZINGO: Let me add for the</p> <p>4 record the ones that I</p> <p>5 omitted. For the record there</p> <p>6 were no documents marked as</p> <p>7 Plaintiffs' Exhibits 95, 96,</p> <p>8 97, 98, 99 and 100.</p> <p>9 (Deposition was concluded at</p> <p>10 approximately 6:00 p.m.)</p> <p>11</p> <p>12</p> <p>13 *****</p> <p>14 FURTHER DEPONENT SAITH NOT</p> <p>15 *****</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

Deposition of John M. Houston

June 26, 2008

Page 222

## REPORTER'S CERTIFICATE

STATE OF ALABAMA:

MONTGOMERY COUNTY:

I, Lyn Daugherty, Certified Shorthand  
Reporter and Commissioner for the State of Alabama  
at Large, do hereby certify that I reported the  
deposition of:

JOHN M. HOUSTON

who was duly sworn by me to speak the truth, the  
whole truth and nothing but the truth, in the  
matter of:

JOAN FAULK OWENS and KAREN LYNN

HUBBARD,

Plaintiffs,

vs.

STATE OF ALABAMA DEPARTMENT OF MENTAL  
HEALTH AND MENTAL RETARDATION, et

al.,

Defendants.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 2:07-cv-650-WHA

Page 223

on Thursday, June 26th, 2008.

The foregoing 221 computer-printed pages  
contain a true and correct transcript of the  
examination of said witness by counsel for the  
parties set out herein. The reading and signing is  
hereby waived.

I further certify that I am neither of kin  
nor of counsel to the parties to said cause nor in  
any manner interested in the results thereof.

This 7th day of July 2008.

---

Lyn Daugherty, ACCR #66  
Expiration Date: 9-30-2008  
Certified Court Reporter  
And Commissioner for the  
State of Alabama at Large

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

v.

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION; JOHN HOUSTON;  
HENRY R. ERVIN,

Defendants.

CASE NO- 2:07-cv-650

STATE OF ALABAMA )

COUNTY OF MONTGOMERY )

Plaintiffs'  
Exhibit 112

AFFIDAVIT OF JOAN OWENS

BEFORE me, the undersigned authority, a Notary Public in and for the State of Alabama at Large, personally appeared Joan Owens, who being known to me and, who being first duly sworn deposeth and says as follows:

1. My name is Joan Owens. I am over the age of 19 years and am competent to give this Affidavit. It is my understanding that this Affidavit is being offered in support of the claims filed by myself and Lynn Hubbard against the Alabama Department of Mental Health and others.

2. I am a resident of Elmore County, Alabama, and have worked in the area of personnel management and human resources for almost thirty (30) years. I was employed for twenty-one (21) years at Elmore Community Hospital, where I ultimately served as Personnel/Payroll Director from 1978 until 1990. I was a member of the Hospital's Executive Team,

and served as Director of Physician Recruitment from 1985 until 1990. As Personnel Director, I was responsible for all hospital personnel and human resources matters in hiring. I conducted disciplinary actions and terminations, developed and maintained personnel records, and served as the advisor to executive management in matters of personnel policy and procedure as well as labor relations.

3. As Director of Physician Recruitment, I was responsible for physician recruitment for the hospital and ensured physician staffing for the hospital's emergency room. I corresponded with prospective physicians, arranged interviews and meetings between physicians and hospital management, negotiated physician salaries, established physician office procedures, and even helped physicians find new homes in the area. There are currently three doctors practicing in Elmore County that I originally recruited, i.e., Dr. Bipin Kumar, an internists; Dr. Spencer Coleman, a family practitioner; and Dr. Bruce Kent, also a family practitioner.

4. In addition to being Personnel Director, I also directly supervised four hospital departments with over nineteen (19) employees. The hospital departments that I supervised were pharmacy, dietary, housekeeping and respiratory therapy. As a member of the hospital's Executive Team, I was on-call for the hospital twenty-four hours a day, seven days a week.

5. I also assisted in ensuring the hospital payroll obligations were met and prepared monthly, quarterly, and yearly payroll taxes, i.e., FICA, FIT, and state taxes. I also assisted in the payment of accounts receivables and worked with auditors on the hospital's budget, and at one point wrote all checks for Elmore Community Hospital.

6. Elmore Community Hospital is JCAHO certified. JCAHO is "The Joint Commission of Accreditation of Healthcare Organizations and Affiliates." JCAHO is the highest accreditation a health care facility can hold and even accredits facilities operated by the Alabama

Department of Mental Health and Mental Retardation. During my employment with Elmore Community Hospital, I was responsible for maintaining criteria regarding employee job evaluations according to JCAHO standards and ensuring that all applicable hospital employees had and maintained current licenses. I played a key role for Elmore Community Hospital regarding JCAHO inspections and review, and trained various hospital departments relevant to JCAHO certification.

7. In 1989, Elmore Community Hospital, like many small community hospitals, was facing an insecure financial future. In order to obtain better job security and benefits, I voluntarily left Elmore Community Hospital and went to work for the State of Alabama, in the Department of Mental Health and Mental Retardation, as an Assistant Personnel Manager at J. S. Tarwater Development Center. After working there for just two months, I was asked to serve as the Interim Acting Personnel Manager.

8. I worked at Tarwater for eight years, from 1990 until 1999. My job duties consisted of many of the same duties I had while working at Elmore Community Hospital, including maintaining personnel records, discipline, administering mental health tests, representing the facility in unemployment compensation hearings, staff development, giving instruction on personnel policies and procedures, and ensuring payroll obligations were met. In addition, I administered merit and exempt system hirings. I also participated in the Title IXX Survey in order for Tarwater to be Medicare and Medicaid certified. I also recruited health care professionals for Tarwater, including a family practice physician, RNs, and LPNs.

9. In 1999, I applied for and was hired as the Personnel Director at Greil Hospital, where I was the only personnel officer for the 113-employee facility. After only two months working at that facility, the hospital was inspected and certified by JCAHO. While serving as Personnel Director I was a member of the hospital's management team, and performed all the payroll functions.

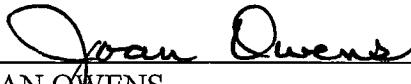


Currently, Greil employs not only a personnel director but also has an assistant personnel director and a clerical person for the same size staff that existed when I was the only personnel officer at the facility.


10. At all times during my employment with the Department I have received "exceeds standards" ratings on my evaluations.

11. Henry Ervin has asked me many times to oversee the Central Personnel Office in his absence but, I was never evaluated for this duty.

Further affiant, sayeth not.

  
\_\_\_\_\_  
JOAN OWENS

Sworn to and subscribed before me this the 28th day of July, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 6/24/09

(SEAL)

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

v.

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION; JOHN HOUSTON;  
HENRY R. ERVIN,

Defendants.

CASE NO- 2:07-cv-650

Plaintiffs'  
Exhibit 113

STATE OF ALABAMA )  
COUNTY OF MONTGOMERY )

AFFIDAVIT OF KAREN LYNN HUBBARD

BEFORE me, the undersigned authority, a Notary Public in and for the State of Alabama at Large, personally appeared Karen Lynn Hubbard, who being known to me and, who being first duly sworn deposeth and says as follows:

1. My name is Karen Lynn Hubbard. I am over the age of 19 years and am competent to give this Affidavit. It is my understanding that this Affidavit is being offered in support of the claims filed by myself and Joan Owens against the Alabama Department of Mental Health and others.

2. I have extensive supervisory experience which I initially gained while employed by Kindercare Learning Centers, Corporate Office, where I supervised three shifts of computer staff. My duties at Kindercare included employee training and writing both technical and procedural manuals for computer operations staff.

3. I have over 13 years of progressively responsible experience in human resources management. Immediately upon my promotion from Administrative Support Assistant III to PS III on July 1, 2000, Owens and I jointly shared the responsibility of managing the human resources management programs for Tarwater Developmental Center in Wetumpka and Greil Hospital. A PS III is in the Personnel Specialist series which consists of PS I, PS II, and PS III. While working at Greil, I was responsible for the facility's comprehensive human resources program. My scope of responsibility encompassed recruitment and selection; personnel policy review; update and implementation; ensuring compliance with personnel rules, laws, and regulations; conducting new employee training in personnel policies; overseeing the employee performance appraisal system; and effecting all personnel actions including, hiring, promotions, demotions, transfers, disciplinary actions, and dismissals. I also served as a member of the hospital's management team. I managed all of these functions while continuing to perform recruitment and selection and various other responsible administrative functions at the Central Personnel Office.

4. During the first year of my dual capacity, Greil opened a new Crisis Unit. The Associate Commissioner for Mental Illness at that time, Kim Ingram, made a special note of my efforts in having staff on board in time for the opening of the Crisis Unit, stating: "This absolutely would not have happened without your dedication to detail and willingness to work to get the job done." Ingran's memorandum is included in my personnel file with the State.

5. In December of 2001 Ervin informed me that I "continued to do outstanding work" at Central Office and mentioned my "excellent work" toward assisting the Department in proposing and implementing a salary range increase for mental health workers.

6. During my work at Greil, I assisted in ensuring the facility was in compliance with JACHO Staffing Standards and established a secondary record system to demonstrate systematic competency evaluation procedures. At the completion of the JACHO survey, I was asked on several occasions to participate in the Department's mock survey process designed to assist its facilities in preparing for JACHO surveys.

7. While fulfilling the responsibilities of the Personnel Manager for Greil and PS for the Central Personnel Office, I continued to receive "exceeds standards" ratings on my employee appraisals. After over three years of serving in a dual capacity, I returned to the Central Office full time.

8. All positions in the Personnel Manager classification series require at least a bachelor's degree in Business Administration, Public Administration, Human Resources Management, or a related field. A degree in Social or Behavioral Science, such as Social Work or History, is not a related degree.

9. While working in the Central Office, I was singled out by Defendant Ervin for any human resources project that involved gathering and analyzing data and information to propose solutions or make recommendations. Defendant Ervin appointed me as a member of a work group comprised of Department Personnel Managers, Facility Directors, and Psychiatrists to address the Department's critical need in filling vacant Psychiatrist positions. From that effort, I developed a short-term psychiatrist recruitment plan on Defendant Ervin's behalf.

10. In my capacity as a PS III, I was asked by Mr. Ervin to oversee the Central Personnel Office in his absence. I was never appraised on my performance in that capacity.

11. For over two years, I attended Auburn University Montgomery, where I worked towards a major in English and a minor in Sociology.

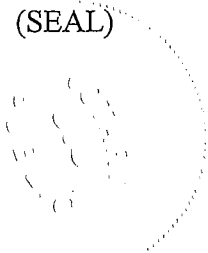
Further affiant, sayeth not.

Karen Lynn Hubbard  
KAREN LYNN HUBBARD

Sworn to and subscribed before me this the 28 day of July, 2008.

Shirley Salach  
NOTARY PUBLIC  
My Commission Expires: 6/24/09

(SEAL)





IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

v.

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION; JOHN HOUSTON;  
HENRY R. ERVIN,

Defendants.

CASE NO- 2:07-cv-650

STATE OF ALABAMA )

COUNTY OF LEE )

Plaintiffs'  
Exhibit 114

AFFIDAVIT OF JUDITH JOHNSTON

BEFORE me, the undersigned authority, a Notary Public in and for the State of Alabama at Large, personally appeared Judith Johnston, who being known to me and, who being first duly sworn deposeth and says as follows:

1. My name is Judith Johnston. I am a citizen and resident of Lee County, Alabama over the age of 19 years and am knowledgeable and competent to give this Affidavit. It is my understanding that this Affidavit is being offered in support of the claims filed by Joan Owens and Lynn Hubbard against the Alabama Department of Mental Health and Mental Retardation ("Department").

2. I retired from the Department in February 2007, after working with the Department for twenty-nine (29) years. From 1995 until my retirement I worked in the Department's Central Office in Montgomery where I was serving upon retirement as Director of Mental Retardation

Facilities in the Division of Mental Retardation. My direct supervisor was Eranell McIntosh-Wilson who was Associate Commissioner of Mental Retardation.

3. The Mental Retardation Division provides comprehensive services and support for persons with mental retardation through one state-operated residential developmental center (the William D. Partlow Mental Development Center ("Partlow") in Tuscaloosa, Alabama), contractual arrangements with community agencies, five regional community services offices, and support service teams. The Central Office Mental Retardation Division provides oversight and supports in planning, service coordination, service delivery, fiscal operations, contracts, eligibility, monitoring/quality enhancement of services, and the monitoring and certification of all community agencies that provide services for persons with mental retardation.

4. I hold a Bachelor's Degree in Speech Pathology and a Master's Degree in Audiology, both from the University of Alabama.

5. As Director of Mental Retardation Facilities I was responsible for overseeing the management and operation of all facilities for persons with mental retardation operated by the Department, and handling policy development for the Mental Retardation Division. My classification at the time of retirement was Facility Director II.

6. During my tenure with the Department I served on the Department's Policy and Procedure Committee which is responsible for reviewing, implementing and revising departmental policies, procedures and regulations. I also served as the planning and quality assurance specialist for the Mental Retardation Division where I was responsible for ensuring that all facilities for persons with mental retardation and centers complied with applicable federal guidelines, rules and regulations, including those concerning employment matters. From at least 1995 until my retirement

I served on the Job Evaluation Committee ("JEC").

7. I was the Assistant Facility Director at W. D. Partlow Developmental Center for approximately four (4) years until my relocation and employment in the Department's Central Office, Mental Retardation Division, in September 1995. Between 1995 and 2006 I served as Acting Director of J. S. Tarwater Developmental Center on two separate occasions, the first for approximately seven (7) months in 1996-1997; the second time for approximately two and a half (2 ½) years from 2002/2003 until the planned closure of Tarwater in January 2005. During the second assignment to Tarwater, I remained responsible for the oversight of operations for the three other state-operated developmental centers in Alabama and helped coordinate and implement the planned closure of two of those Centers. I also served as Acting Interim Director at Partlow Developmental Center for approximately six (6) months in 2006 before returning to the Central Office.

8. I am personally familiar with Joan Owens, Lynn Hubbard, Henry Ervin and Marilyn Benson. Besides working with them in the Central Office I was on the interview panel when both Henry Ervin and Marilyn Benson applied for the position of Personnel Director. Joan Owens was employed as Personnel Specialist III at Tarwater when I served there as acting interim director. Thus, Ms. Owens has worked under my supervision. I also periodically consulted with Ms. Owens, Mr. Ervin, and Ms. Benson regarding employment issues and personnel matters.

9. In my experience Ms. Owens is one of the most competent and professional personnel specialist I have ever known. I found Ms. Owens to be very familiar with federal employment law and all state personnel laws, rules, regulations and policies concerning merit and exempt positions. Indeed, for me Ms. Owens was the go-to-person in Central Personnel who could assist me and provide guidance and answer employment questions on most any matter brought to

her attention. I found Ms. Owens to be more competent and knowledgeable about rules, regulations, policies and procedures, and the practical application of those rules, regulations, policies and procedures related to personnel matters, than either Henry Ervin or Marilyn Benson.

10. The JEC exists to advise the Commissioner regarding non-appointed employment positions within the Department that are not merit positions, such jobs being known as “exempt” positions. Thus, the JEC reviews, considers, and approves or rejects proposals to create new exempt positions, proposed qualifications and specifications for such positions, and proposed changes in the qualifications or specifications for existing exempt positions. The Commissioner of the Department then has the opportunity to consider and act upon the JEC’s approval, rejection or recommendations regarding any matters coming before it.

11. I was present and voted along with the JEC to approve the position of Departmental Assistant Personnel Manager. Although the JEC approved the position of Departmental Assistant Personnel Manager, the qualifications and specification for the job were never presented to the JEC for its review, consideration and approval or rejection. Furthermore, the JEC did not, and was never given the opportunity, to review, consider and approve or reject the omission of the substitution provision; minimum education requirements; or knowledge, skills or abilities (“KSAs”) for the position of Departmental Assistant Personnel Manager.

12. Other than the position of Departmental Assistant Personnel Manager, I cannot recall and do not know of an exempt position that was presented to the JEC and where the qualifications and job specification for such position were never presented. Other than the position of Departmental Assistant Personnel Manager, I cannot recall and do not know of the Commissioner ever approving the qualifications and specification for an exempt position without the JEC having

first had the opportunity to consider and approve or reject such qualifications and specification.

13. I am very familiar with the function, duties and responsibilities of the position of Central Personnel Manager. From my experience Joan Owens is fully competent and capable of serving as either Central Personnel Manager or Departmental Assistant Personnel Manager even though she does not have a degree. As an almost 30-year veteran of the Department working in upper management, and possessing both a bachelors and master's degree, I know of no reason why an individual such as Joan Owens should be prohibited from competing for a personnel managerial job at the Department solely because she does not possess a degree.

14. In my experience Joan Owens is capable of assisting with the day-to-day operations of the Central Personnel Office and planning, organizing, developing, coordinating and implementing a comprehensive personnel management program.

15. Joan Owens is capable in coordinating the Central Personnel Office including personnel functions such as recruitment selection, job placement, position classification, employee training, performance appraisals and affirmative action.

16. Joan Owens is capable of maintaining an ongoing classification and pay information from governmental agencies and the private sector.

17. Joan Owens is capable of advising the Director of Human Resources and making recommendations to the department heads, administrators, supervisors, and employees on rules, regulations and proper personnel procedures concerning such matters as performance evaluations, promotions, demotions, transfers and dismissals.

18. Joan Owens is capable of conducting and attending staff meetings, state personnel meetings or personnel officer meetings.



19. Joan Owens is capable of coordinating various supervisor training for departmental personnel officers, including making oral presentations as needed.

20. I have learned that one of the represented job functions for the position of Departmental Assistant Personnel Manager was researching and identifying grant funding sources and to coordinate efforts regarding grant funding sources. However, before and at the time of my retirement in 2007, the Office of Policy and Planning within the Department already had these duties and responsibilities, and existed for the purpose of assisting Departmental personnel regarding grants.

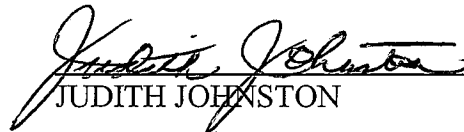
21. As a past member of the Department's Policy and Procedure Committee, it would violate the policies, rules and regulations of the Department for management to hand-pick or preselect an employee to serve as Departmental Assistant Personnel Manager. It would also violate the Department's policies, rules and regulations for management to design the qualifications and specifications for the position of Departmental Assistant Personnel Manager around Marilyn Benson - or any one individual - and thereby give Marilyn Benson a competitive advantage over other potential applicants. It would also be highly improper and unprofessional for Henry Ervin to use Marilyn Benson to research and prepare the job qualifications and specification for an exempt position and then encourage Marilyn Benson to apply for the position. It would also be highly improper and unprofessional for Marilyn Benson to prepare the qualifications and specification for a new exempt position around her own qualifications and KSAs, and then apply for such position.

22. It is against the policies, rules and regulations of the Department to create a job based on race. Yet in my experience working at the Department managerial jobs were created for blacks but I have no knowledge of any managerial job(s) that were created for whites. For example, at one


time the Central Personnel Office was responsible for staff development and Commie Carter, a black female and Central Personnel Office employee, was assigned staff development duties. Subsequently, a separate staff development office was created, having the same duties and responsibilities that had previously been assigned to Commie Carter, and Commie Carter was promoted and placed in charge of the office.

23. Each of the three (3) service divisions of the Department (Mental Health, Mental Retardation, and Substance Abuse) once handled all contract matters for their respective Division with the Department's Finance Department. Subsequently, a separate Contracts Office was created for the Department and a black employee, Cathy Townsend, who previously handled contract matters for the SA Division, was promoted and placed in charge of the Department's Contracts Office without, to my knowledge, being interviewed for the promotion.

Affiant further saith not.

  
JUDITH JOHNSTON

SWORN to and SUBSCRIBED before me this the 23<sup>rd</sup> day of July, 2008.

  
NOTARY PUBLIC  
My Commission Expires: 6/24/09

DEPARTMENT OF MENTAL HEALTH / MENTAL RETARDATION  
APPLICATION EVALUATION FORM

Commie Carter Departmental Assist Personnel Mgr / H5500 05-27  
Applicant Name Position Title / Job Code Announcement #  
9/30/05 9/26/05 8813339  
Closing Date Date Received Positions #  
10/5/05 M. Mathe  
Date Evaluated Rater's Name

**MINIMUM QUALIFICATIONS REQUIREMENTS FOR POSITION**

**Qualification:**

**Applicant's Training / Education:** Meets Requirements yes  
Bachelor's degree in Human Resource Management / Personnel Management, Business Administration, Public Administration, or related field.

**Applicant's Experience:** Meets Requirements yes (74m)  
Extensive (72 months or more) working in a professional personnel management position, plus experience (24 months or more) in a supervisory capacity.

**Licensure / Certification:** Meets Requirements N/A Date Verified \_\_\_\_\_

**Special Requirements:** Meets Requirements N/A Date Verified \_\_\_\_\_

**Meets Minimum Qualification Requirements.** yes

**Preference Will Be Given To Individuals With:**

- Master's degree in any of the above specified fields of study.
- Work experience in the governmental / public sector.
- Work experience in a healthcare setting.

**Plaintiffs'  
Exhibit 115**

**Meets Minimum Qualification Requirements (1 point)** 1

**Additional Specific / Related Education (2 points)** 2

Required Degree yes Additional Related Degree MS yes

**Additional Specific / Related Experience (5 points)** 0

Total Related Experience – Required Experience = Additional Related Experience (/12)  
One Point For Each Full Year of Additional Related Experience Up to Maximum of 5

**Preference Points** 2

Work experience in preferred area: 1 to 5 years = 1 point 6 to 10 years = 2 points  
MS Degree = 2 points

**OVERALL RATING:** 5  
=====

**Interview:** Date: \_\_\_\_\_ Time: \_\_\_\_\_

1/2

CLASS TITLE: Dept Assistant Personnel Mgr CODE: H.5500  
 NAME: Commie Carter

DEGREE SUBJECT: BS/Bus Admin MS/ Human Resource Mgmt  
 DEGREE LEVEL / DATE RECEIVED: BS/ 6/84 MS 3/92  
 TOTAL QUALIFIED, POST DEGREE WORK EXPERIENCE: \_\_\_\_\_  
 PROFESSIONAL LICENSURE: N/A

**WORK EXPERIENCE WORKSHEET:**

1.) QUALIFIED = Y - N YRS/MON = 55 M 03/01 - Present  
AL DMH/MR CO  
Staff Development Spec V (Director) Plan/organize/coor/implementation  
 comprehensive staff development  
 program.

2.) QUALIFIED = Y - N YRS/MON = 9 M 7/00 - 3/01  
AL DMH/MR  
Personnel Spec III acting Per Mgr (Parttime)

3.) QUALIFIED = Y - N YRS/MON = 13 M 6/99 - 7/2000  
AL DMH/MR CO  
Personnel Spec III / admin coor  
(Personnel Dept)

4.) QUALIFIED = Y - N YRS/MON = 4 M 7/98 - 10/98  
AL DMH/MR CO  
Personnel Spec III / acting Dept Per Mgr.  
Human Resources

5.) QUALIFIED = Y - N YRS/MON = 48 M 8/94 - 7/98  
DMH/MR CO  
Personnel Spec III w Human Resources  
(Performed HR / Personnel mgmt functions)

2/2

CLASS TITLE: \_\_\_\_\_ CODE: \_\_\_\_\_

NAME: Commie Carter

DEGREE SUBJECT: \_\_\_\_\_

DEGREE LEVEL / DATE RECEIVED: \_\_\_\_\_

TOTAL QUALIFIED, POST DEGREE WORK EXPERIENCE: \_\_\_\_\_

PROFESSIONAL LICENSURE: \_\_\_\_\_

WORK EXPERIENCE WORKSHEET:

1.) QUALIFIED = Y - (N) YRS/MON = 58 M 10/89 - 8/94  
AC DMH/RA CO  
Staff Development Spec III  
Staff Development Dept  
Coor/provided training  
& development programs  
for staff.

2.) QUALIFIED = Y - (N) YRS/MON = 21 M 1/88 - 10/89  
AL DMH/MR CO  
Staff Devel Spec II  
Scheduled/Coor  
training programs  
maintained HR data

3.) QUALIFIED = Y - (N) YRS/MON = 27 10/85 - 1/88  
AL DMH/MR CO  
Data Coor / Inservice Instructor  
Staff Development

4.) QUALIFIED = Y - N YRS/MON = \_\_\_\_\_

5.) QUALIFIED = Y - N YRS/MON = \_\_\_\_\_



Ervin, Henry

From: Mathis, Mike

Sent: Monday, February 13, 2006 11:49 AM

To: Ervin, Henry

Subject: Dept Assist Per Mgr, Interview Assessment form & Questions

Henry: Attached is the interview assessment form and list of questions I worked up. After reviewing your questions, I recommend you select questions from both. I centered more on responsibilities involving assistance and support of facilities. If the applicant is going to be able to function anytime soon as your Assistant they must have a strong knowledge background of DMH/MR and State Personnel practices. Mike

**Plaintiffs'**  
**Exhibit 116**

2/13/2006

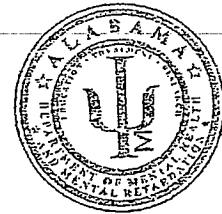
ADMH 04-00002



BOB RILEY  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF MENTAL HEALTH  
AND MENTAL RETARDATION

RSA UNION BUILDING  
100 N. UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410



JOHN M. HOUSTON  
COMMISSIONER

May 31, 2006

Mr. Murry A. Gosa, Intake Supervisor  
U. S. Equal Employment Opportunity Commission  
Birmingham District Office - 420  
Ridge Park Place  
1130 22<sup>nd</sup> Street South, Suite 2000  
Birmingham, AL 35205

RE: EEOC Charge No. 420-2006-01138  
Charging Party: Karen Hubbard

Dear Mr. Gosa:

In response to the request for a statement of our position with respect to the issues contained in the above charge, the Department of Mental Health and Mental Retardation (DMH/MR) denies the Charging Party's allegations of discrimination and submits the following:

**CHARGE OF DISCRIMINATION:**

On September 15, 2005, I was denied the opportunity to apply for the promotional position of Departmental Assistant Personnel Manager. In the past every announcement in personnel stated that other directly related education and/or experience may be substituted for all or part of the basic requirements upon approval of the Job Evaluation Committee. The announcement for the position of which I am complaining was not written in such a manner. It is my belief that this job announcement was written to fit the educational background of a Black employee assigned to my job classification.

I believe that I was discriminated against in violation of Title VII of the 1965 Civil Rights Act, as amended because of my race, White.

**RESPONSE:**

**Plaintiffs'  
Exhibit 117**

ADMH 05-00003

Mr. Murry A. Gosa, Intake Supervisor

Page 2

May 31, 2006

The Charging Party was employed by the DMH/MR on December 30, 1991, as a Clerk Typist II. The classification of Clerk Typist II was later converted to an Administrative Support Assistant I. She was promoted to an Administrative Support Assistant III on October 11, 1997, and promoted again on July 1, 2000, to a Personnel Specialist III. She is currently in that same position in the Bureau of Human Resources in the Central Office in Montgomery, Alabama.

A Job Evaluation Committee was established by the DMH/MR in 1989 to maintain its departmental exempt classification and pay structure. The classification plan is a grouping of positions that are organized into separate categories involving similar duties and responsibilities. A job description, or classification (class) specification, is written for each position and provides a general description of the duties, responsibilities, and the minimum qualifications in terms of education and experience required to perform the duties. The substitution of experience for education may be allowed for certain positions.

The responsibilities of the Job Evaluation Committee include making recommendations to the Commissioner about revising class specifications, establishing new job classifications, adjusting salary ranges, and substituting training/experience for the required minimum qualifications. The members of this Committee consist of the following DMH/MR employees: Henry Ervin (black), Director, Bureau of Human Resources (formerly referred to as the Personnel Office), who Chairs the Committee; Otha Dillihay (black), Associate Commissioner of the Division of Administration; Susan Chambers (white), Associate Commissioner of the Division of Mental Illness (MI); Eranell McIntosh-Wilson (black), Associate Commissioner of the Division of Mental Retardation (MR); Kent Hunt (white), Associate Commissioner of the Division of Substance Abuse; John Zeigler (white), Director of Public Information, which is under the Office of the Commissioner; Paul Bisbee (white), Director of Mental Illness Facilities; Judith Johnston (white), Director of Mental Retardation Facilities.

If there is not an existing classification for the duties and responsibilities of a position, a class specification is written and sent to the State Personnel Department for approval. The State Personnel Department is a separate entity from the Department of Mental Health and Mental Retardation. Pursuant to state law, the State Personnel Department is authorized to perform certain duties, including administering and maintaining a classification plan, and establishing registers for the various classifications within the merit system.

To fill a vacant exempt position within the DMH/MR, approval must be obtained from the Associate Commissioner of the requesting division and the Commissioner of the DMH/MR. An open and competitive process is then followed to select an employee, which includes posting an Announcement of Intent To Fill a Non-Merit Position (which describes the position based on the information in the class specification), accepting applications, and interviewing qualified applicants. Upon completion of the interviews,

Mr. Murry A. Gosa, Intake Supervisor

Page 3

May 31, 2006

the interview panel members individually rank the applicants interviewed, the scores are totaled, and the applicants are ranked by numerical score. The appointing authority selects the employee to be hired after considering all of the pertinent information concerning the applicants interviewed, including the interview panels' assessments, the applicant's knowledge, skills, abilities, and past experience relevant to the position.

As previously indicated, the DMH/MR has approximately 3,000 employees, who work in the facilities or regional community services offices throughout the state or in the Central Office in Montgomery. Approximately 1,100 of these employees are in 220 classifications that are exempt from the state merit system. The six (6) DMH/MR facility personnel offices perform personnel service functions such as hiring for merit and exempt positions, appraisals, coordinating disciplinary actions, record maintenance, etc., for the eight (8) facilities operated by the DMH/MR.

The Bureau of Human Resources in the Central Office in Montgomery, in which the Charging Party works, performs these personnel service functions for the employees that work for the Central Office, which includes those individuals based in the regional community services offices throughout the state. In addition to performing these personnel service functions, the Bureau of Human Resources in the Central Office processes the actions of the facility personnel offices and also monitors departmental personnel practices, develops and recommends departmental personnel policies and procedures, and provides technical assistance and back-up support to the facility personnel offices.

Between August, 2003, and September, 2004, six (6) facilities operated by the DMH/MR were either consolidated or closed. The closing of the four (4) personnel offices in these facilities resulted in the Bureau of Human Resources in the Central Office taking over the personnel service functions for the employees based in the regional community services offices throughout the state. Since the facility consolidations/closings, additional functions and other areas of responsibilities have also been assigned to this office.

Mr. Henry Ervin (black), Director of the DMH/MR Bureau of Human Resources Management in the Central Office, discussed the expansion of the overall responsibilities in this office with his supervisor, Mr. Otha Dillihay (black), Associate Commissioner for the Administration Division, and Ms. June Lynn (white), Executive Assistant and Advisory Attorney to Mr. Dillihay. A determination was made that a position was needed in this office to perform a higher level of responsible professional personnel management work. The employee in this position was to be supervised by Mr. Ervin and assist him in directing the operations of the Bureau of Human Resources Management in the Central Office. Since there was not an existing classification for the duties and responsibilities of this position, a new class specification was written for Departmental Assistant Personnel Manager (Pay Range 80) that includes the minimum educational qualification of a bachelor's degree from a four-year college or university.

Mr. Murry A. Gosa, Intake Supervisor

Page 4

May 31, 2006

The Charging Party states that prior Announcements (which are based on the class specifications) for vacant positions allowed experience to be substituted for the educational qualification, but the substitution clause was not included in the Announcement for this position. On numerous occasions over a period of time, the DMH/MR Job Evaluation Committee has addressed the issue of substitution, including the possibility of devaluing a college degree by allowing experience to be substituted for education. The Committee has concluded that substitution should not be allowed for higher level professional positions. Therefore, the class specification for the position of Departmental Assistant Personnel Manager is consistent with the Committee's determination. See e.g. **Exhibit A**, selected Job Evaluation Committee Minutes 2004-2005.

Please note that the State Personnel Department does not have a merit position of Departmental Assistant Personnel Manager; however, attached as **Exhibit B** is a copy of the class specifications for the merit positions of Departmental Personnel Manager I (Pay Range 76), Departmental Personnel Manager II (Pay Range 80), and Departmental Personnel Manager III (Pay Range 85). As can be seen in these descriptions, the minimum qualifications require a bachelor's degree from a four-year college or university and do not allow for substitution of experience for the educational requirements.

Both Mr. Dillihay and Ms. Lynn reviewed and approved the class specifications for this position. Mr. Ervin also met with Mr. John Houston (white), who was Acting Commissioner of the DMH/MR at that time, regarding the establishment of this position and his conversations with Mr. Dillihay and Ms. Lynn. (Mr. Houston was appointed as Commissioner of the DMH/MR effective July 23, 2005.) Mr. Houston also agreed with the minimum qualifications for this position.

Since the State Personnel Department must approve class specifications for new exempt positions, Mr. Ervin provided a copy of the class specification for Departmental Assistant Personnel Manager to Ms. Jackie Graham (white), Deputy Director of State Personnel (now the State Personnel Director), and requested approval to establish this new exempt position. Ms. Graham signed Mr. Ervin's memorandum indicating her acceptance of the class specification. Mr. Ervin's memorandum and the class specification are attached as **Exhibit C**. Further, as discussed in the response to a related charge EEOC Charge No. 420-2006-01123, Ms. Lynn became Acting Associate Commissioner for Administration and had the opportunity to recommend adding a substitution of experience for education while in that position. However, she too believed that education should be valued more. Lastly, Mr. Dillihay and Ms. Lynn as Associate and Acting Associate Commissioner, respectively, and Mr. Houston as Commissioner and appointing authority for this position, all insisted that this position would be advertised statewide to get the broadest number of qualified applicants for this position who met the class specifications, including the required education.



Mr. Murry A. Gosa, Intake Supervisor

Page 5

May 31, 2006

Attached as **Exhibit D** is a copy of Mr. Ervin's memorandum to Mr. Houston enumerating the reasons to create the position of Departmental Assistant Personnel Manager and requesting his approval to fill the position. Attached to Mr. Ervin's memorandum is the Request To Fill Exempt Position on Staffing Plan, which was approved by Mr. Houston, as well as Mr. Dillihay. This position was announced twice. Initially it was announced between September 15-30, 2005. At the time, the only qualified applicants who applied were three African-American females. Because a wider applicant pool was desired by Ms. Lynn, Mr. Dillihay and Mr. Houston, another announcement was issued, with newspaper advertising, extending the deadline to October 28, 2005. This second announcement did not net any additional qualified applicants. The Announcements posted for this position are attached as **Exhibit E**. Applications were accepted, and the qualified applicants were interviewed and ranked by the members of the interview panel. An individual was selected for this position after consideration of all of the pertinent information concerning the applicants interviewed, including the interview panels' assessments, the applicant's knowledge, skills, abilities, and past experience relevant to the position.

Attached are the following DMH/MR policies as indicated below:

1. DMH/MR Policy No. 60-20, Equal Employment Opportunity (**Exhibit F**)
2. DMH/MR Policy No. 60-22, Job Evaluation Committee (**Exhibit G**)
3. DMH/MR Policy No. 60-92, Exempt Selection Procedure (**Exhibit H**)

In conclusion, the DMH/MR again denies the Charging Party's allegations of discrimination. As explained above, an Announcement is based on the class specification for a position. The class specification for the new exempt position of Departmental Assistant Personnel Manager does not allow for the substitution of experience for education, as this is a higher level of responsible professional personnel management work to be performed in the DMH/MR Bureau of Human Resources in the Central Office in Montgomery. It is clear that the DMH/MR Job Evaluation Committee has affirmed that substitution should not be allowed in higher level professional positions. In addition, personnel manager positions within the merit system, which is administered by the State Personnel Department, also do not allow for substitution. The appropriate approvals were obtained for the class specification for the position of Departmental Assistant Personnel Manager, and an open and competitive process was followed to select the individual hired.

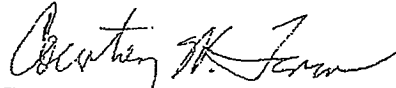
If you have any questions or need additional information, please contact Kathy Thompson at (334) 242-3038.

Mr. Murry A. Gosa, Intake Supervisor

Page 6

May 31, 2006

Sincerely,

A handwritten signature in black ink, appearing to read "Courtney W. Tarver".

Courtney W. Tarver  
Deputy Attorney General and Counsel  
Bureau of Legal Services

Attachments

pc: Mr. Otha Dillihay (without attachments)  
Mr. Henry Ervin (without attachments)

ADMH 05-00008



## APPLICATION FOR EMPLOYMENT

Exempt Classification

RETURN TO

ADDRESS ON ANNOUNCEMENT

AN EQUAL OPPORTUNITY EMPLOYER

## GENERAL INSTRUCTIONS

Complete all portions of this application that are applicable to you and the position for which you are applying. Failure to do so may result in your not being considered for the position for which you are applying. Type or print clearly in ink.

If you are applying for a specific current vacancy, please give position title and announcement # In-House #136  
M. H. Personnel Manager III

Full Name Elliott James (Jim) H  
Last First Middle

Social Security Number [REDACTED]

Address [REDACTED] Apt # [REDACTED]  
Street City State Zip Code

## LOCATIONS

Your application will be retained in our non-merit recruitment files for one year, and you will be notified of non-merit vacancies at those facilities in which you express and interest. Please indicate below at which of our facilities you would consider employment. You will only be sent announcements of openings at facilities when you check. After one year and after each succeeding year, you will need to contact this office and request that your application remain in our active files and/or submit an updated application. Failure to do so will result in your name being removed from our mailing list and your application will be destroyed,

## Mental Illness Facilities

- (X) Bryce Hospital --- Tuscaloosa, AL  
( ) Searcy Hospital --- Mt. Vernon, AL  
( ) Harper Geriatric Psychiatry Center --- Tuscaloosa, AL  
( ) North Alabama Regional Hospital --- Decatur, AL  
( ) Thomasville MH Rehab Center --- Mt. Vernon, AL  
( ) Hardin Secure Medical Facility --- Tuscaloosa, AL  
( ) Greil Psychiatric Hospital --- Montgomery, AL

## Mental Retardation Services

- ( ) William D. Partlow Developmental Center --- Tuscaloosa, AL  
( ) Region I --- Decatur, AL  
( ) Region IIE --- Birmingham, AL  
( ) Region IIW --- Tuscaloosa, AL  
( ) Region III --- Daphne, AL  
( ) Region IV --- Wetumpka, AL

## ICF Nursing Homes

- ( ) Alice Kidd --- Tuscaloosa, AL  
( ) Central Administrative Offices --- Montgomery, AL

(See map on last page for locations of facilities)

Telephone Home: (205) [REDACTED]  
Number Office: (205) [REDACTED]

Legal Residence [REDACTED] [REDACTED] [REDACTED]  
City County State

Place of Birth [REDACTED] [REDACTED] [REDACTED]  
City County State

Minimum annual salary you would consider \_\_\_\_\_

## REFERRAL

Where did you learn about the job for which you applied or about the Department's application procedure?

- \_\_\_ Internet  
\_\_\_ Voluntary Walk-in  
\_\_\_ State Employment Service  
\_\_\_ College Career Day  
\_\_\_ DMH/MR Employee  
\_\_\_ Newspaper Ad  
\_\_\_ Professional Journal Ad  
\_\_\_ Radio/TV Ad  
\_\_\_ Private Employment Agency  
\_\_\_ State Personnel Department  
\_\_\_ Professional Convention  
\_\_\_ Friend/Relative  
\_\_\_ Responded to Announcement of Vacancy  
\_\_\_ Other --- Please explain

**Plaintiffs'  
Exhibit 118**

Are you willing to accept shift work during evening and night hours? Yes ( ) No ( )

Are you available to work Full Time X Part Time  
Temporary \_\_\_\_\_

The Alabama Department of Mental Health and Mental Retardation is an Equal Opportunity Employer. It does not discriminate with respect to race, color, religion, national origin, gender, age or disability.

PLEASE DO NOT OMIT SIGNATURE AND AUTHORITY TO RELEASE INFORMATION BLOCK ON BACK OF APPLICATION

## EDUCATION

High School graduate or GED? (x) Yes ( ) No		Be as specific as possible about degree and major.				
Type of School	Name and Address	From Mo/Yr	To Mo/Yr	Did you Graduate?	Degree and Date	Major
College Undergraduate	University of Montevallo Montevallo, Al	1976	1978	Yes	BS May 1978	Social Work
College Undergraduate	University of Alabama Birmingham, Alabama	1975	1976	No		
College Graduate						
College Graduate						
Vocational Business						

Circle Highest Grade Completed

High School	9	10	11	12	College	13	14	15	(16)	Graduate School	17	18	19
-------------	---	----	----	----	---------	----	----	----	------	-----------------	----	----	----

If you attended college in pursuit of either an under-graduate to graduate degree and did not obtain such, Please indicate how many hours were received toward the degree.

Sem. Hrs. \_\_\_\_\_

Qtr. Hrs. \_\_\_\_\_

Please include the appropriate transcript with this Application where applicable.

Please include copies of professional certificates/license, date, and state issued when applicable

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EMPLOYER/PROFESSIONAL REFERENCES

List three reliable persons, not relatives, who know you well enough to give information about your professional/educational background

Name	Address/Zip Code	Telephone Number	Occupation
<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>

Have you ever been involuntarily terminated or forced to resign from a position? ( ) Yes (X) No

Have you ever been convicted of a felony or other law violation, other than minor traffic violations during the last seven years? (Conviction will not necessarily disqualify applicant from employment) ( ) Yes (X) No

If you answered "Yes" to any of the above questions, attach an explanation on a separate sheet.

Have you filed an application with this department before? (X) Yes ( ) No. If yes, give date and facility name:  
 Date 1994?? 2004 Facility Name Glenn Ireland Developmental Center, Partlow Dev. Center

Are you a citizen of the U.S. or otherwise legally eligible to work in this country? (X) Yes ( ) No. If not a citizen of the U.S. Give Visa type/status \_\_\_\_\_ (Proof of U.S. citizenship or Immigration status will be required upon employment.)

ADMH 10-00122



For Consumers

For Family Members

For Advocates

For Employment Opportunities

For Students



John Houston  
Commissioner

**Commissioner's Office**

- Legislative Affairs
- Public Information
- Advocacy Services
- Legal Services
- Special Investigations
- Policy and Planning
- Certification
- Administration
- Chief of Staff
- Children's Services
- Executive Assistant
- FAQ

Mental Illness

Mental Retardation

Substance Abuse

Administration

**Commissioner's Office**

John Houston, Commissioner

The Alabama Department of Mental Health and Mental Retardation is the state agency responsible for serving Alabama citizens with mental illness, mental retardation, and substance abuse addiction. Annually, we serve over 230,000 people through a broad network of state mental illness and mental retardation facilities and community-based services. These services include residential, outpatient, and prevention programs with respect to substance abuse addiction. We are very proud of the fact that our state operated facilities have achieved and maintained high standards in health care provision. Currently, we operate one developmental center for persons with mental retardation and seven facilities for persons with mental illness. Through community-based services the department contracts with hundreds of local service providers in all 67 counties. Our nearly 3,000 employees are among the best in the nation. From the housekeeping, direct care staff, medical staff, and clinical staff at the facilities to administrative staff at the Central Office, each person plays an integral part in the overall successful and cost-efficient administration of the DMH/MR.

This website is designed to give the public a thorough look into Alabama's mental health system. We want users of the site to find information and resources for consumers, families, professionals, students and teachers, and others with an interest in the mission, activities, and special projects of the Alabama DMH/MR and its provider networks.

Sincerely,

*John M. Houston*



About Us

FAQs

News & Publications

Advocacy Services

Nursing Home Screening (OBRA PASRR)

Deaf Services

Children's Services

Staff Development and Training

Nurse Delegation Program

Becoming a Community Provider

Contracts & Vendor Opportunities

Contact Us

**Plaintiffs'  
Exhibit 119**



**DEPOSITION OF DAVID ROSS PETTY**

**July 24, 2008**

**Pages 1 through 63**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

**Plaintiffs'  
Exhibit 120**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOAN FAULK OWENS and KAREN  
LYNN HUBBARD,

Plaintiffs,

vs.

CIVIL ACTION NO.  
2:07-cv-650-WHA

STATE OF ALABAMA DEPARTMENT  
OF MENTAL HEALTH AND MENTAL  
RETARDATION, et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF DAVID ROSS PETTY, taken  
pursuant to stipulation and agreement before Lyn  
Daugherty, ACCR #66, Certified Court Reporter and  
Commissioner for the State of Alabama at Large, in  
the Law Offices of Melton, Espy & Williams, 255  
Dexter Avenue, Montgomery, Alabama, on Thursday,  
July 24th, 2008, commencing at approximately  
1:10  
p.m.

\* \* \* \* \*

July 24, 2008

Page 2

## Deposition of David Ross Petty

1 APPEARANCES  
2 FOR THE PLAINTIFFS:  
3 Mr. J. Flynn Mozingo  
4 MELTON, ESPY & WILLIAMS  
5 Attorneys at Law  
6 255 Dexter Avenue  
7 Montgomery, Alabama 36104

8 FOR THE DEFENDANTS:  
9 Mr. H.E. Nix, Jr.  
10 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON  
11 Attorneys at Law  
12 4001 Carmichael Road, Suite 300  
13 Montgomery, Alabama 36106

14 ALSO PRESENT: Ms. Joan Owens  
15 Ms. Lynn Hubbard  
16 Ms. June Lynn

17 \*\*\*\*\*

## EXAMINATION INDEX

18 DAVID ROSS PETTY  
19 BY MR. MOZINGO ..... 5  
20 BY MR. NIX ..... 39  
21 BY MR. MOZINGO ..... 58

## EXHIBIT INDEX

22 PAGE  
23 Plaintiff  
106 Drawing made by Mr. Petty 61

Page 4

1 between the parties hereto and the witness that the  
2 signature of the witness to this deposition is  
3 hereby waived.

4 \*\*\*\*\*

5 DAVID ROSS PETTY

6 The witness, after having first been duly sworn  
7 to speak the truth, the whole truth and nothing but  
8 the truth testified as follows:

9 MR. MOZINGO: And one thing that I  
10 forgot to ask, since we have a  
11 new individual at the table  
12 today, I'm assuming that she  
13 is your corporate witness?  
14 Ms. Lynn.

15 MR. NIX: No. She's here to help  
16 me.

17 MR. MOZINGO: Or corporate  
18 representative?

19 MR. NIX: No. She's here to help  
20 me in the deposition.

21 MR. MOZINGO: So she's not here as  
22 a corporate representative?

23 MR. NIX: No.

Page 3

## STIPULATIONS

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of DAVID ROSS PETTY is taken pursuant to  
5 the Federal Rules of Civil Procedure and that said  
6 deposition may be taken before Lyn Daugherty,  
7 Certified Shorthand Reporter, and Commissioner for  
8 the State of Alabama at Large, without the  
9 formality of a commission, that objections to  
10 questions other than objections as to the form of  
11 the question need not be made at this time but may  
12 be reserved for a ruling at such time as the said  
13 deposition may be offered in evidence or used for  
14 any other purpose by either party provided for by  
15 the Statute.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that the filing of said deposition is hereby  
19 waived and may be introduced at the trial of this  
20 case or used in any other manner by either party  
21 hereto provided for by the Statute regardless of  
22 the waiving of the filing of the same.

23 It is further stipulated and agreed by and

Page 5

## EXAMINATION

2 BY MR. MOZINGO:

3 Q. Would you please state your full name for  
4 the record?

5 A. David Ross Petty.

6 Q. Mr. Petty, where do you live?

7 A. Prattville, Alabama.

8 MR. NIX: Excuse me, Flynn, if I  
9 might. I just wanted to make  
10 kind of an opening remark  
11 about the deposition because  
12 Mr. Petty, as I have learned,  
13 was a confidential assistant,  
14 secretarial assistant to  
15 Ms. Lynn, who is a lawyer and  
16 who is and does represent the  
17 associate commissioner so that  
18 I would just like for you, if  
19 you would, to be very careful  
20 in terms of your questioning  
21 of Mr. Petty so as not to put  
22 him in a position of having to  
23 be concerned about the

Deposition of David Ross Petty

July 24, 2008

Page 6

1 confidentiality of some  
2 portion of his testimony or  
3 the attorney-client privilege,  
4 which we do not waive. So I  
5 wanted to make that statement  
6 and just explain that to you  
7 and ask you to be mindful of  
8 it if you would, please.  
9 MR. MOZINGO: Well, and I'm going  
10 to take the position that  
11 Ms. Lynn can't wear two hats.  
12 She can't be an executive  
13 assistant and the attorney at  
14 the same time, especially  
15 where you already have a legal  
16 department with an attorney.  
17 So I understand that, but I  
18 would disagree that Mr. Petty  
19 is serving as her assistant.  
20 He was serving as the  
21 assistant for an attorney for  
22 the department. I understand  
23 she has a legal degree, but

Page 7

1 that doesn't mean she's the  
2 department's lawyer.  
3 MR. NIX: Well, she is one of the  
4 department's lawyers who  
5 serves in a dual capacity and  
6 both give legal advice and  
7 does other functions that  
8 obviously, as you know, the  
9 department has a lot of  
10 lawyers.  
11 MR. MOZINGO: I understand. And  
12 you and I have had this  
13 discussion before and, in  
14 fact, I've even mentioned to  
15 you that I might want to take  
16 Ms. Lynn's deposition before  
17 and you've never told me that  
18 that would not be permissible  
19 due to an attorney-client  
20 privilege.  
21 MR. NIX: No. I think I did say,  
22 though, that she is an  
23 attorney and that she serves

Page 8

1 in a dual capacity and that if  
2 you do take her deposition  
3 there may be some questions  
4 that she would not be able to  
5 answer for the reason that it  
6 would be privileged. I mean,  
7 that was the discussion we  
8 had.  
9 MR. MOZINGO: All right. I  
10 understand that. And I think  
11 we'll just have to agree to  
12 disagree whether his testimony  
13 would in any way implicate the  
14 attorney-client privilege.  
15 And that might be something  
16 that Judge Albritton would  
17 need to decide ultimately.  
18 Okay.  
19 Q. Mr. Petty, let me go back. Your middle  
20 name is Ross did you say?  
21 A. Yes, sir.  
22 Q. Okay. Mr. Petty, how long have you lived  
23 in Prattville?

Page 9

1 A. Eight years.  
2 Q. And where did you live before then?  
3 A. Here in Montgomery.  
4 Q. Are you from Montgomery?  
5 A. Yes, sir.  
6 Q. Where did you attend high school?  
7 A. I attended Lowndes Academy in Lowndesboro.  
8 Q. Okay. Where do you currently work?  
9 A. For the state, Department of Agriculture.  
10 Q. And what do you do with the Department of  
11 Agriculture?  
12 A. I register pesticide products for the  
13 state. I am an ASA III.  
14 Q. And what is an ASA, please?  
15 A. Administrative Support Assistant III.  
16 Q. What does an ASA III -- Well, let me strike  
17 that and ask you, what do you do as an ASA  
18 III?  
19 A. I receive applications from several hundred  
20 companies who want to sell pesticide  
21 products for the state. They come to me to  
22 be reviewed. I review the labels to make  
23 sure everything is appropriate and

Page 10

1 everything is correct on the label to be  
 2 sold.  
 3 Q. And how long have you worked with the  
 4 Department of Agriculture?  
 5 A. Since September of last year.  
 6 Q. Where did you work before then?  
 7 A. For the mental health department.  
 8 Q. Why did you leave mental health and go to  
 9 work for the Department of Agriculture?  
 10 A. I was under the assumption that I would be  
 11 promoted at the new department. That never  
 12 happened due to budget constraints.  
 13 MR. NIX: When you say new  
 14 department -- I apologize --  
 15 which one?  
 16 A. Agriculture department. Yes, sir.  
 17 MR. MOZINGO: Well, I was going to  
 18 ask him. I didn't understand  
 19 that either.  
 20 Q. When you say promoted to the new  
 21 department, can you explain that to me  
 22 because I'm confused?  
 23 A. Yes. I transferred out of the Department

Page 11

1 of Mental Health into the Department of  
 2 Agriculture. My current supervisor, Tony  
 3 Coffer, interviewed me, told me that after  
 4 I got there I would be promoted to a higher  
 5 level position.  
 6 Q. Okay. And you have not been promoted as  
 7 yet?  
 8 A. That's correct.  
 9 Q. Is that what you're saying?  
 10 A. That's correct.  
 11 Q. So you transferred to the Department of  
 12 Agriculture in anticipation of a promotion?  
 13 A. Correct.  
 14 Q. When you left the Department of Mental  
 15 Health, who were you working for?  
 16 A. June Lynn.  
 17 Q. And Ms. Lynn is seated at the end of the  
 18 table here; is that correct?  
 19 A. That's correct.  
 20 Q. Prior to working with Ms. Lynn, who did you  
 21 work for?  
 22 A. The Department of Corrections.  
 23 Q. So the entire time that you worked for the

Page 12

1 Department of Mental Health you worked for  
 2 June Lynn?  
 3 A. That is correct.  
 4 Q. When you were working under Ms. Lynn, what  
 5 was her title?  
 6 A. To the best of my knowledge, it was  
 7 executive assistant to the associate  
 8 commissioner for administration and I think  
 9 slash advisory attorney.  
 10 Q. And did she hold that position the entire  
 11 time you worked under her?  
 12 A. For a brief time she was acting associate  
 13 commissioner, but all the other time she  
 14 was under that position.  
 15 Q. When did you begin working for the  
 16 department?  
 17 A. November 2004.  
 18 Q. And then coming into the department in  
 19 November of 2004 you immediately began  
 20 working under Ms. Lynn?  
 21 A. That is correct.  
 22 Q. In what capacity or position?  
 23 A. I was her assistant, secretary, personal

Page 13

1 assistant.  
 2 Q. Was that your title?  
 3 A. No, sir. My official title was  
 4 Administrative Support Assistant III.  
 5 Q. Which is the same position you have today  
 6 with the agriculture department?  
 7 A. Correct.  
 8 Q. And how long did you work with Ms. Lynn --  
 9 Excuse me. Tell me what time frame  
 10 Ms. Lynn became the -- was she the acting  
 11 associate commissioner?  
 12 A. Yes.  
 13 Q. Okay. At what point did she become the  
 14 acting associate commissioner?  
 15 A. I can't recall specific dates, but I want  
 16 to say it was sometime in 2006.  
 17 Q. And how long did she serve in that  
 18 capacity?  
 19 A. I really can't remember specifically, but I  
 20 would estimate and say between six and 10  
 21 months maybe.  
 22 Q. And then after serving as the acting  
 23 associate commissioner, she went back to



Deposition of David Ross Petty

July 24, 2008

Page 14

1 serving as executive assistant to the  
 2 associate commissioner; correct?  
 3 A. Correct. That's right.  
 4 Q. While you were working at the department,  
 5 who were the associate commissioners that  
 6 Ms. Lynn worked under?  
 7 A. The only associate commissioner that she  
 8 worked under to my knowledge was Otha  
 9 Dillihay.  
 10 Q. And can you explain to me the  
 11 relationship -- the employment relationship  
 12 with an associate commissioner and an  
 13 executive associate commissioner?  
 14 A. The executive assistant is basically the  
 15 right-hand man. Handles pretty much  
 16 meetings, just a little bit of everything  
 17 for the associate. And when the associate  
 18 is absent, she takes on his duties and  
 19 fills in as needed.  
 20 Q. So when you were working under Ms. Lynn,  
 21 she would have been the right-hand person  
 22 for Otha Dillihay?  
 23 A. That is correct.

Page 15

1 MR. NIX: And attorney.  
 2 A. Yeah. And advisory attorney. She  
 3 advised -- advises on whatever he needs  
 4 advice on, I guess, legally.  
 5 Q. Are you familiar with Joan Owens and Lynn  
 6 Hubbard?  
 7 A. Yes.  
 8 Q. And how are you familiar with them?  
 9 A. They were coworkers of mine when I worked  
 10 there.  
 11 Q. You worked in the central office?  
 12 A. Yes, sir.  
 13 Q. And Ms. Owens and Ms. Hubbard also worked  
 14 in the central office?  
 15 A. That's correct.  
 16 Q. About how close were they physically to  
 17 where you were working?  
 18 A. We were in the same suite, which had  
 19 probably maybe 10 to 12 or 14 people in  
 20 there. Physically from my desk I would say  
 21 15, 20 feet from my desk were their  
 22 offices.  
 23 Q. Are you personally familiar with Henry

Page 16

1 Ervin?  
 2 A. Yes.  
 3 Q. Are you personally familiar with Marilyn  
 4 Benson?  
 5 A. Yes.  
 6 Q. Are you personally familiar with Otha  
 7 Dillihay?  
 8 A. Yes.  
 9 Q. Are you personally familiar with  
 10 Commissioner John Houston?  
 11 A. Yes.  
 12 Q. And would your familiarity with the  
 13 individuals I just referenced, would that  
 14 be because you worked with them in the  
 15 central office?  
 16 A. That is correct.  
 17 Q. When you left the state -- I mean, the  
 18 Department of Mental Health to go to the  
 19 agricultural department, were you still  
 20 working under June Lynn at that time?  
 21 A. Yes.  
 22 Q. Have you ever worked under anyone else in  
 23 the department besides June Lynn?

Page 17

1 A. Yes. For that period of time that Ms. Lynn  
 2 was acting associate commissioner,  
 3 Mr. Dillihay was transferred down to the  
 4 mental illness division as the associate  
 5 for that division. He took me down there  
 6 with him. And for that period of time I  
 7 worked under him specifically.  
 8 Q. So you served as Mr. Dillihay's assistant  
 9 for a period of time, then?  
 10 A. That's correct.  
 11 Q. And can you tell me roughly what the period  
 12 of time was?  
 13 A. It would be that same period of time that  
 14 Ms. Lynn was acting associate. And I can't  
 15 give you specific time frame, but like I  
 16 said, it could be six to 10 months up to a  
 17 year. I don't remember.  
 18 Q. Was that in '04? '05?  
 19 A. I think it was in '06.  
 20 Q. Are you certain of that?  
 21 A. I'm not certain. It could be 2005. I just  
 22 really can't remember. It was a long time  
 23 ago.

Page 18

1 Q. Mr. Petty, did you ever hear Otha Dillihay  
2 make any comments about the number of  
3 whites or white people working in the  
4 department -- central office of the  
5 Department of Mental Health?

6 A. Yes.

7 MR. NIX: Let me object to the  
8 form. If you don't mind, kind  
9 of flesh it out if you would  
10 before you --

11 Q. Well, I could ask it better than that and  
12 that would be just say did you ever hear  
13 Mr. Dillihay make -- and I will flesh it  
14 out, but let me reask it again since I kind  
15 of muddled the question. Did you ever hear  
16 Mr. Dillihay make any comments about the  
17 number of white people working in the  
18 central office at the Department of Mental  
19 Health?

20 A. Yes.

21 MR. NIX: Let me object to the  
22 form.

23 Q. What did you hear Mr. Dillihay say?

Page 19

1 MR. NIX: Before David answers  
2 that, I would appreciate your  
3 asking him where, when and the  
4 context.

5 MR. MOZINGO: Well, I'll get  
6 around to that. You'll have  
7 an opportunity to ask him  
8 yourself.

9 MR. NIX: See, the problem is that  
10 if he is --

11 MR. MOZINGO: Let me finish my  
12 question.

13 MR. NIX: Well, let me just state  
14 my objection first and then  
15 you can finish it. But the  
16 problem is I don't know  
17 whether it was in the context  
18 of a meeting with Ms. Lynn  
19 over a legal matter. I don't  
20 know whether it had any  
21 relationship to -- well, I  
22 think David's job was  
23 confidential. If I'm not

Page 20

1 mistaken, his entire job was.  
2 But I don't know whether the  
3 comments that David heard were  
4 in the context of a  
5 conversation with Ms. Lynn on  
6 a legal matter. If that's the  
7 case, then it would be  
8 privileged. So, I mean,  
9 that's the problem I'm having,  
10 Flynn. It's very difficult  
11 for me to know.

12 MR. MOZINGO: Okay.

13 MR. NIX: And so I object to the  
14 form and I would object to any  
15 testimony about a  
16 confidential -- any  
17 confidential communication or  
18 any attorney-client privilege  
19 communication.

20 MR. MOZINGO: All right.

21 Q. What did you hear Mr. Dillihay say?

22 A. I heard him say something to the effect of  
23 this department has so many white people in

Page 21

1 power positions, it needs more black people  
2 in these positions, something to that  
3 effect. Don't quote me on that because --  
4 it was something along those lines.

5 Q. But you feel reasonably certain that he  
6 said something along the lines that there  
7 were too many white people working in the  
8 department?

9 MR. NIX: I object to the form of  
10 that.

11 Q. You can answer the question.

12 A. Yes.

13 Q. Do you feel reasonably certain that he said  
14 something along the line that there were  
15 more blacks needed in management positions?

16 A. Yes.

17 MR. NIX: Object to the form.

18 Q. You can answer.

19 A. Yes.

20 Q. Did you hear him say anything else?

21 A. Not that I recall.

22 Q. When did you hear Mr. Dillihay make that  
23 statement?

Deposition of David Ross Petty

July 24, 2008

Page 22

- 1 A. I cannot give you a date because I -- I do  
2 not know.  
3 Q. Who all was present when the statement was  
4 made?  
5 A. To the best of my knowledge June Lynn. I  
6 would have to say to the best of my  
7 knowledge it was probably just June and  
8 myself.  
9 Q. He made that statement in your presence?  
10 A. That is correct.  
11 Q. Do you know the context in which the  
12 statement was made?  
13 A. No, I do not.  
14 Q. Do you know what Mr. Dillihay was talking  
15 with Ms. Lynn about when the statement was  
16 made?  
17 A. No, I do not.  
18 Q. Do you know why Mr. Dillihay was talking to  
19 Ms. Lynn when the statement was made?  
20 A. No, sir.  
21 Q. Was the statement made while you were  
22 working under Mr. Dillihay or Ms. Lynn?  
23 A. Under Ms. Lynn.

Page 23

- 1 Q. How long -- Well, obviously the statement  
2 was made I would assume when Mr. Dillihay  
3 was working there; correct?  
4 A. That is correct.  
5 Q. How long -- When the statement was made,  
6 how long was that before you left the  
7 department in 2007?  
8 A. I can't answer that because I don't recall  
9 the exact date or the time frame that the  
10 statement was made. I just know the  
11 statement was made.  
12 Q. Did you ever hear Commissioner Houston make  
13 a statement that there were too many whites  
14 working in the central office?  
15 A. No.  
16 Q. Did you ever hear Commissioner Houston  
17 state that more blacks were needed in  
18 management positions at the central office?  
19 A. No.  
20 Q. Did you ever hear Henry Ervin say that  
21 there were too many whites working at the  
22 central office?  
23 A. No.

Page 24

- 1 MR. NIX: Object -- Go ahead.  
2 Q. Did you ever hear Henry Ervin state that  
3 more blacks were needed in management  
4 positions at the central office?  
5 A. No.  
6 Q. Why is it that you remember commissioner --  
7 Associate Commissioner Dillihay making that  
8 statement?  
9 A. Well, at the time when I heard that, I try  
10 not to be involved in a lot of things. But  
11 when a statement was made such as that, it  
12 kind of just gets your attention. And at  
13 the time I didn't say anything because it's  
14 none of my business. But when something is  
15 said like that in an open environment when  
16 others could have heard it as well, it  
17 really just got my attention, you know.  
18 Q. And when you say in an open environment,  
19 where were you when the statement was made?  
20 A. I was at my desk.  
21 Q. Where was Mr. Dillihay when the statement  
22 was made?  
23 A. He was outside of his -- standing outside

Page 25

- 1 of his office next to my desk.  
2 Q. He was standing next to your desk?  
3 A. Yes.  
4 Q. Where was Ms. Lynn when the statement was  
5 made?  
6 A. I believe she was in her office.  
7 Q. Can you describe to me that office where  
8 your desk is located? You told me earlier  
9 it's about 20 feet away from Ms. Owens and  
10 Ms. Hubbard. Is it close to anyone else's  
11 offices?  
12 A. When you walk in the suite, to the right  
13 was the associate commissioner's office.  
14 That contained Mr. Dillihay's office,  
15 Ms. Lynn's office, and right outside both  
16 of those offices my desk was right there.  
17 Across from me is another lady named Linda  
18 Traywick's desk, and she is Mr. Dillihay's  
19 assistant or was Mr. Dillihay's assistant.  
20 So there was four people that worked in  
21 that small little area.  
22 Q. But you sit out in the reception area?  
23 A. Correct.

Page 26

1 Q. Which is a public area when you come in the  
2 suite?  
3 A. Yes, sir.  
4 Q. Do you recall if anyone else was present  
5 besides Ms. Lynn, Mr. Dillihay and  
6 yourself?  
7 A. I don't recall.  
8 Q. Is it possible others were present?  
9 A. Yes.  
10 Q. Other than that statement, did you ever  
11 hear Mr. Dillihay make any other statement  
12 about white people that you as a white  
13 person found offensive or derogatory?  
14 A. I can't give you certain instances or  
15 certain times or dates, but there was --  
16 there seemed to be open discussion at times  
17 about that whole situation from  
18 Mr. Dillihay. And it really just kind of  
19 shocked me. And maybe he was just  
20 comfortable talking about that kind of  
21 stuff. But it seemed that he had no  
22 problem just voicing his opinion. And I've  
23 heard, you know, several times he would

Page 27

1 just openly say stuff like that.  
2 Q. When you say open -- pretty much open  
3 discussion by Mr. Dillihay --  
4 A. That's right.  
5 Q. -- can you give me some examples of other  
6 things he said?  
7 A. No, I can't. But I can just say it was  
8 kind of the same as that statement that he  
9 made. It was just kind of along those same  
10 lines. He said that kind of stuff a lot.  
11 Q. So he made statements similar to what you  
12 heard more than once?  
13 A. Yes.  
14 Q. And the other times that he made those  
15 statements, do you recall where they would  
16 have been made?  
17 A. The same exact place. Now, my desk is  
18 outside their offices. Now, what context  
19 they were talking, it could have been  
20 legal. I have no idea. All I do know is  
21 that the statements were made and that  
22 Mr. Dillihay seemed to take pride in the  
23 fact that he wanted to change that, the

Page 28

1 whole philosophy of the hiring and the  
2 perception of the whites and the black. It  
3 seemed like -- That's my opinion.  
4 MR. NIX: And --  
5 MR. MOZINGO: Let me -- You're  
6 going to get your chance  
7 unless you've got an  
8 objection.  
9 MR. NIX: I do. I want to move to  
10 strike the opinion and the  
11 comment about pride, took  
12 pride in that. It sounds like  
13 it's more of an opinion than  
14 it is any kind of statement.  
15 Q. Was it your impression, Mr. Petty, that  
16 Mr. Dillihay wanted to change the  
17 department and in particular place more  
18 blacks in management positions in the  
19 department?  
20 A. Absolutely.  
21 MR. NIX: I object to the form of  
22 the question and object to the  
23 answer and move to strike

Page 29

1 both.  
2 Q. And did you reach that impression based  
3 upon comments Mr. Dillihay made in your  
4 presence?  
5 A. Yes.  
6 Q. Comments similar to those that you  
7 previously shared with us?  
8 A. Yes.  
9 Q. That being comments that there were too  
10 many whites in the central personnel  
11 office?  
12 A. Yes.  
13 MR. NIX: Object to the form. I  
14 object to the form because he  
15 didn't say that he heard that  
16 exactly that way or more than  
17 once.  
18 Q. Did you develop that impression based upon  
19 Mr. Dillihay's comments in your presence  
20 that more blacks were needed in management  
21 positions in the central office?  
22 MR. NIX: I object again to the  
23 form of the question.

Page 30

1 Q. You can answer.  
 2 A. Yes.  
 3 Q. Have you ever heard Mr. Dillihay make a  
 4 derogatory or negative statement about Joan  
 5 Owens?  
 6 A. No.  
 7 Q. Have you ever heard Mr. Dillihay make a  
 8 derogatory or negative statement about Lynn  
 9 Hubbard?  
 10 A. No.  
 11 Q. Have you ever heard Henry Ervin make a  
 12 derogatory or negative statement about  
 13 Ms. Owens or Ms. Hubbard?  
 14 A. No.  
 15 Q. Where did Mr. Ervin work in relation to  
 16 where you were positioned in the office?  
 17 A. I would say 25 feet away to -- go up a  
 18 little bit to the right. He was the second  
 19 office over.  
 20 Q. So let me get this straight. You told me  
 21 earlier you worked kind of in a reception  
 22 area. Was there a hallway in this  
 23 reception area? Because you were telling

Page 31

1 me about other people's offices that were  
 2 within 20, 25 feet away.  
 3 A. There's not a hallway. You walk in the  
 4 suite and directly to the right is our  
 5 little area with the two desks and then the  
 6 two offices for the --  
 7 Q. Do me a favor. I'm going to give you a  
 8 piece of paper and this pen. Can you kind  
 9 of draw the layout of the office for me?  
 10 A. Yeah.  
 11 Q. And you can put an X where you would have  
 12 sat in regard to that layout.  
 13 A. Do you just want my small office part, or  
 14 do you want the entire suite?  
 15 Q. The entire suite, if possible.  
 16 (Brief pause.)  
 17 A. Okay.  
 18 Q. Okay. I see that you have David P. on  
 19 here. That represents where you would sit?  
 20 A. Yes, sir.  
 21 Q. Would you put a circle around your name?  
 22 A. (Witness complies).  
 23 Q. And there is Linda T. across from you. Is

Page 32

1 that where Linda --  
 2 What's her last name?  
 3 A. Traywick.  
 4 Q. -- Traywick would sit?  
 5 A. That is correct.  
 6 Q. And so you sit in an open area?  
 7 A. Yes, sir.  
 8 Q. And that open area continues -- actually  
 9 Lynn Hubbard and Joan Owens' offices are  
 10 off that same open area?  
 11 A. That is correct.  
 12 Q. And, in fact, Marilyn Benson's office is in  
 13 the same open area?  
 14 A. She is in an enclosed office, but that is  
 15 her office, yes, sir.  
 16 Q. So if someone were to stand next to your  
 17 desk, could they be heard through this  
 18 entire open area including by Marilyn  
 19 Benson, Joan Owens or Lynn Hubbard?  
 20 MR. NIX: I object to the form of  
 21 the question.  
 22 Q. Is it --  
 23 MR. NIX: I object to the form

Page 33

1 because it does not refer to  
 2 the volume, the tone, whether  
 3 or not all of the people are  
 4 in enclosed offices. And it  
 5 doesn't ask him a question  
 6 that I think he could possibly  
 7 know in view of the fact that  
 8 he would have been sitting at  
 9 a desk in one place and other  
 10 people would have been in  
 11 another place.  
 12 Q. Mr. Petty, can someone talking in this open  
 13 hallway where you sit, can they be heard in  
 14 this open area --  
 15 A. Yes.  
 16 Q. -- that you've drawn for me?  
 17 A. Yes.  
 18 Q. Was Mr. Dillihay whispering when he made  
 19 the statement that you heard?  
 20 A. No.  
 21 Q. Was he talking at least in a normal tone of  
 22 voice?  
 23 A. Yes.



Page 34

- 1 Q. And someone talking in a normal tone of  
2 voice can be heard in this open area you've  
3 drawn?
- 4 A. Yes.
- 5 Q. And this open area that you've drawn, Joan  
6 Owens and Lynn Hubbard's offices are  
7 directly off that open area; correct?
- 8 A. That is correct.
- 9 Q. Okay. Mr. Petty, what I'm going to do is  
10 to mark what you've drawn here as a  
11 Plaintiffs' Exhibit. And before your  
12 deposition ends today, I'm going to give it  
13 an exact number and so we'll have it on the  
14 record; okay?
- 15 Do you know anything, Mr. Petty, about  
16 the creation of the position of  
17 Departmental Assistant Personnel Manager?
- 18 A. Nothing other than the fact that I knew  
19 that there was a position being filled and  
20 that was that position.
- 21 Q. When you say being filled, I've learned in  
22 this case that there is a creation of a  
23 position or development of a position and

Page 35

- 1 then a filling of the position where you  
2 actually announce it and go through the  
3 interview process. So when did you first  
4 learn of the position?
- 5 A. I do not know an exact date or time frame.  
6 All I know is that just by working in there  
7 in that suite everybody kind of worked  
8 together and you kind of just happened --  
9 everybody kind of knew what was going on,  
10 especially in the work that I did because  
11 the associate commissioner was over  
12 personnel, human resources. And their work  
13 we kind of -- their work came to us to be  
14 signed off by either the associate or  
15 Ms. Lynn. So several things would come  
16 across the desk, you know, and that's how I  
17 was informed of it.
- 18 Q. Do you know anything about the creation of  
19 the position of Departmental Assistant  
20 Personnel Manager?
- 21 A. No, I do not.
- 22 Q. What do you know about the filling of that  
23 position?

Page 36

- 1 A. The only thing that I know about the  
2 filling of that position is that Marilyn  
3 Benson was appointed as that position. She  
4 got that job.
- 5 Q. And when did you learn that?
- 6 A. I don't know the date, sir.
- 7 Q. And, again, going back to what you told me  
8 earlier about the statements made by Otha  
9 Dillihay, those statements were made while  
10 he was standing next to your desk?
- 11 A. That is correct.
- 12 Q. And that was in the open area?
- 13 A. Yes, sir.
- 14 Q. What is this door here to that you've  
15 drawn?
- 16 A. That's the entry into the entire suite.  
17 That is not the only door. There is  
18 another door by -- in Eric Johnson's area.  
19 And I did forget to add one person's office  
20 on that.
- 21 Q. On the exhibit?
- 22 A. Yes.
- 23 Q. Who did you forget to add?

Page 37

- 1 A. Ashley Nichol.
- 2 Q. Is her office in the area of these  
3 cubicles?
- 4 A. His office is in that area.
- 5 Q. Ashley is a he. Okay. Who works in these  
6 cubicles that you've drawn?
- 7 A. Support staff for personnel, Jody Roy. Her  
8 last name is now Smith. Oh, gosh. I don't  
9 even know who else. There could have been  
10 changes while I was gone -- since I've been  
11 gone.
- 12 Q. Well, do you know roughly while you were  
13 working for Ms. Lynn roughly the number of  
14 people that were working in this cubicle or  
15 in cubicles in this area that you've drawn?
- 16 A. Yes. I would say -- I would say between  
17 four -- about four in the cubicle.
- 18 Q. At least --
- 19 A. At least four.
- 20 Q. And how far away are the cubicles from  
21 where you sit?
- 22 A. I would say 20 feet, 25 feet. I'm not --
- 23 Q. Right next to Marilyn Benson's office;

Page 38

1 correct?  
 2 A. They are right outside across -- right  
 3 outside Henry Ervin and Marilyn Benson's  
 4 office.  
 5 Q. About 25 feet from you?  
 6 A. Right.  
 7 Q. And the cubicles are in the same open area  
 8 that you sit in?  
 9 A. Yes.  
 10 MR. MOZINGO: That's all I have.  
 11 Why don't we take a second --  
 12 Do you want me to go ahead and  
 13 find out that exhibit number,  
 14 Chip, so we can go ahead and  
 15 put it on here or do you want  
 16 to wait?  
 17 MR. NIX: It doesn't matter. I  
 18 mean, she can put it on there  
 19 and refer to it whenever you  
 20 want to, Lyn.  
 21 MR. MOZINGO: Okay. I'm done.  
 22 EXAMINATION  
 23 BY MR. NIX:

Page 39

1 Q. Mr. Petty, were you a merit system employee  
 2 or an exempt employee?  
 3 A. I was a merit system employee.  
 4 Q. Now, at any time while you were at the  
 5 Department of Mental Health were you ever  
 6 an exempt employee?  
 7 A. Yes.  
 8 Q. When was that?  
 9 A. The time when Mr. Dillihay worked for the  
 10 division of mental illness as the associate  
 11 commissioner and at the same time Ms. Lynn  
 12 was acting associate I was promoted to  
 13 Administrative Assistant VII, which is an  
 14 exempt position.  
 15 Q. And during that time when Mr. Dillihay  
 16 moved to mental illness, did he actually  
 17 move his office to a different part of the  
 18 building?  
 19 A. Yes. He moved his materials to the other  
 20 end of the building into his new office.  
 21 Q. And that part of the office of the  
 22 Department of Mental Health, is it on the  
 23 same floor?

Page 40

1 A. Yes.  
 2 Q. It's on the same floor as the central -- or  
 3 the associate commissioner for  
 4 administration?  
 5 A. All four associate commissioners are on the  
 6 fourth floor.  
 7 Q. Right. And is mental illness all the way  
 8 across the building in a diagonal corner?  
 9 A. That is correct.  
 10 Q. And so while you worked for Mr. Dillihay in  
 11 mental illness, you were in a diagonal  
 12 corner of the building?  
 13 A. Right.  
 14 Q. Right?  
 15 A. Yes, sir.  
 16 Q. How far would you say that is?  
 17 A. I have no idea. I don't know.  
 18 Q. It's a long way, though, isn't it?  
 19 A. It's on the exact opposite corner of the  
 20 building.  
 21 Q. Okay. Now, a minute ago Mr. Mozingo asked  
 22 you to describe the relationship I think it  
 23 was between the associate commissioner and

Page 41

1 the assistant and the attorney, who would  
 2 be Ms. Lynn.  
 3 MR. MOZINGO: I said working  
 4 relationship, not just  
 5 relationship.  
 6 MR. NIX: Oh, I'm sorry. Well,  
 7 that's what I meant.  
 8 Q. But, in fact, I mean, wouldn't it be  
 9 correct to say that you've never really  
 10 looked at their job descriptions for the  
 11 purpose of comparing them?  
 12 A. Have I ever looked at their job  
 13 descriptions to compare them? Is that what  
 14 you're asking?  
 15 Q. For the purpose of comparing them, right.  
 16 A. That was -- That's true.  
 17 Q. You have not?  
 18 A. I have not.  
 19 Q. And you've not worked in either of those  
 20 positions?  
 21 A. No, sir.  
 22 Q. If I understand you correctly, Mr. Petty,  
 23 with respect to these communications you've

Deposition of David Ross Petty

July 24, 2008

Page 42

1 testified to from Mr. Dillihay, you don't  
 2 have any idea when they occurred?  
 3 A. I could not say, sir. I have no idea.  
 4 Just under the time that I was employed  
 5 there.  
 6 Q. And would it be fair to say you don't  
 7 remember the exact words of those  
 8 conversations?  
 9 A. The exact words that is -- No, I don't  
 10 remember the exact wording.  
 11 Q. Are you familiar with a group called the  
 12 Legislative Review Oversight Committee?  
 13 A. Yes.  
 14 Q. How are you familiar with them?  
 15 A. My job we had to prepare stuff, documents  
 16 to go over to the LCRC, print off the  
 17 agenda for the LCRC. That's how I'm  
 18 familiar with it.  
 19 Q. You printed the agenda?  
 20 A. Yes.  
 21 Q. That means that -- well, I guess the -- am  
 22 I calling it by the wrong name, Legislative  
 23 Review Oversight Committee? Or is it

Page 43

1 the --  
 2 MS. LYNN: It's the LCRC.  
 3 A. Legislative Contract Review.  
 4 Q. Oh, Legislative Contract Review Committee.  
 5 All right. Thanks. So would they create  
 6 the agenda?  
 7 A. Yes.  
 8 Q. And then you would print it off on an  
 9 e-mail or something like that?  
 10 A. You go to their Web site and print off  
 11 their agenda for that meeting.  
 12 Q. Did anyone from the central office attend  
 13 those meetings?  
 14 A. Yes.  
 15 Q. Who?  
 16 A. Different people at different times. For  
 17 the most part I believe it was technically  
 18 the responsibility of the associate  
 19 commissioner for administration.  
 20 Q. Mr. Dillihay?  
 21 A. Mr. Dillihay. But more times than others  
 22 Ms. Lynn went in his place.  
 23 Q. And Mr. Dillihay went?

Page 44

1 A. At times. And others who -- Kathy Townsend  
 2 went. She was over the office of  
 3 contracts. Others who had contracts, it  
 4 involved their division or their office,  
 5 they would go with Ms. Lynn or  
 6 Mr. Dillihay.  
 7 Q. And what do they do? What do they do in  
 8 that committee?  
 9 A. I've never been to it. Just my guess -- I  
 10 don't know. I don't know. They argue over  
 11 contracts. I know that.  
 12 Q. Do they approve contracts from outside  
 13 sources to do work for the state?  
 14 A. I believe so.  
 15 Q. And do you know who is on that committee?  
 16 A. Not all the members. I know, I think, a  
 17 couple. I couldn't tell you who.  
 18 Q. Who can you recall is on it?  
 19 A. I could be totally wrong, but I think Thad  
 20 McClammy may be on it. I don't know. I  
 21 really couldn't tell you. I'm sorry.  
 22 Q. Do you know who Alvin Holmes is?  
 23 A. Yes.

Page 45

1 Q. Is he on that committee?  
 2 A. I do not know.  
 3 Q. Do you know who John Knight is?  
 4 A. Yes.  
 5 Q. Do you know if he's on that committee?  
 6 A. I don't know if he is or not.  
 7 Q. Have you ever heard any feedback from  
 8 things said in those committee meetings  
 9 about minority contractors?  
 10 A. No.  
 11 Q. You've never heard or read in the newspaper  
 12 or anything else like that that Alvin  
 13 Holmes and John Knight both complained  
 14 vehemently about the lack of minority  
 15 contractors?  
 16 A. No. I've never heard or read that.  
 17 Q. The conversations that you heard, were they  
 18 always between Mr. Dillihay and Ms. Lynn?  
 19 A. I would think so. I would say yes. But  
 20 maybe not exclusively.  
 21 Q. Did you hear more than one?  
 22 A. I want to say yes. Maybe not -- Maybe not  
 23 a conversation between Ms. Lynn and

Page 46

1 Mr. Dillihay, but I've heard statements and  
 2 remarks. And other people around, you  
 3 know -- You've got to remember I'm right  
 4 outside of these offices.  
 5 Q. I know exactly where you sat. You're  
 6 really -- Your desk was really kind of in  
 7 a -- I don't know what you would call it.  
 8 A hall. I mean, not a hallway, but I mean  
 9 it's bigger than that. But it was  
 10 recessed, wasn't it, from the rest of that  
 11 suite?  
 12 A. That's right.  
 13 Q. And when I stand at the desk where you sat,  
 14 I can't see much of anything out in the  
 15 larger area. Could you?  
 16 MR. MOZINGO: Object to the form.  
 17 Are you testifying?  
 18 MR. NIX: No. I'm just trying to  
 19 preface the question. I don't  
 20 know how else to ask it.  
 21 Q. Could you see much out there in that larger  
 22 area from your desk?  
 23 A. Yes.

Page 47

1 Q. What could you see?  
 2 A. From my desk I could see all the way -- If  
 3 you were sitting at my desk, I could see  
 4 the desk in front of Marilyn Benson's  
 5 office. And things change. Cubicle  
 6 arrangements change. At one time --  
 7 Q. So it may not be the same now?  
 8 A. Right.  
 9 Q. Okay.  
 10 A. Yeah. At one time I could sit at my desk  
 11 and look all the way to the corner of the  
 12 other end of the suite.  
 13 Q. I see. Now, Mr. Petty, do you know what  
 14 Mr. Dillihay's record was with regard to  
 15 the promotion of and the appointment of  
 16 whites as opposed to blacks?  
 17 A. No.  
 18 Q. Do you know who Kathleen Brantley is?  
 19 A. Yes.  
 20 Q. Who is she?  
 21 A. At the time I left the department she was  
 22 the CFO, chief financial officer for the  
 23 department.

Page 48

1 Q. Did you know that Mr. Dillihay was the  
 2 person responsible for making sure that she  
 3 had good objective consideration for that  
 4 job and that she was -- received that job?  
 5 MR. MOZINGO: Object to the form.  
 6 That assumes facts not in  
 7 evidence.  
 8 Q. Did you know that?  
 9 MR. MOZINGO: Same objection.  
 10 A. Can you repeat the question?  
 11 Q. Did you know that Mr. Dillihay was a  
 12 proponent for Kathleen Brantley to get the  
 13 job of CFO?  
 14 MR. MOZINGO: Object to the form.  
 15 It assumes facts and  
 16 characterization of facts,  
 17 both of which are not in  
 18 evidence.  
 19 Q. Did you know that?  
 20 MR. MOZINGO: Same objection.  
 21 A. Did I know that he was a proponent?  
 22 Q. Yes.  
 23 MR. MOZINGO: Same objection.

Page 49

1 A. I would say yeah. Yes.  
 2 Q. And Kathleen Brantley is what -- what is  
 3 her race?  
 4 A. She's white.  
 5 Q. She's white. And that's the highest job in  
 6 that office, isn't it, the finance office,  
 7 is the CFO?  
 8 A. She would -- Yes. That is correct.  
 9 Q. Did you attend job evaluation committee  
 10 meetings?  
 11 A. I think I may have attended one. I could  
 12 be wrong, but I think I may have attended  
 13 one.  
 14 Q. Do you remember when that was?  
 15 A. No, I don't.  
 16 Q. What capacity or in what capacity did you  
 17 attend that meeting?  
 18 A. Like I say, if I did attend, I attended a  
 19 lot of meetings to take minutes and stuff.  
 20 If I would have been there, it would have  
 21 only have been to take minutes. So I would  
 22 have to say, no, I did not attend, because  
 23 now the more I think about it I did not

Deposition of David Ross Petty

July 24, 2008

Page 50

1 attend the job evaluation committee  
2 meetings.  
3 Q. Okay. Did you know the position that  
4 Mr. Dillihay took with regard to  
5 education -- having an education, let's say  
6 having a bachelor's degree, for example,  
7 for certain types of jobs?  
8 MR. MOZINGO: Object to the form.  
9 A. No.  
10 Q. Did you know that in the job evaluation  
11 committee meetings he took a strong  
12 position in favor of education --  
13 MR. MOZINGO: Object to the form.  
14 Q. -- having a bachelor's degree for certain  
15 positions?  
16 MR. MOZINGO: Object to the form.  
17 A. I would have no idea.  
18 Q. Did you know that he was a proponent for  
19 the person with the best qualifications  
20 getting the job as opposed to some  
21 favorite?  
22 MR. MOZINGO: Object to the form.  
23 A. I didn't attend the meetings, so I don't

Page 51

1 know how he thought.  
2 Q. Okay. In terms of your interaction with  
3 him, did you know that he was a proponent  
4 for the person with the best qualifications  
5 to get a job?  
6 MR. MOZINGO: Object to the form  
7 again. That is based upon  
8 facts that are not in evidence  
9 and characterization -- or  
10 mischaracterization of facts  
11 that are not in evidence. So  
12 I object to the form of the  
13 question.  
14 A. I don't know.  
15 Q. David, when you were at corrections, were  
16 you looking for another job before you went  
17 to mental health?  
18 A. Yes.  
19 Q. Who is Kathy Holt?  
20 A. She was my supervisor at corrections.  
21 Q. Did you know that Joan Owens helped you get  
22 the job at mental health?  
23 MR. MOZINGO: Object to the form.

Page 52

1 A. Actually, if I remember, Kathy Smith  
2 worked -- I don't know where she worked at  
3 the time. I think she worked with me at  
4 corrections and she told me about an  
5 opening at mental health.  
6 Q. Okay. And you did not know anything about  
7 Ms. Owens?  
8 A. No. I never -- No.  
9 Q. Did anyone help you when you left mental  
10 health get the job at agriculture?  
11 A. No.  
12 Q. Did Lynn Hubbard refer you to that job at  
13 agriculture?  
14 A. No. No.  
15 Q. You're not aware of that?  
16 MR. MOZINGO: Object to the form.  
17 A. I would say no.  
18 MR. MOZINGO: Assumes facts not in  
19 evidence.  
20 Q. Now, David, what is the difference between  
21 an exempt job position and a merit job  
22 position?  
23 A. To my knowledge mental health is the only

Page 53

1 department that does that. There could be  
2 another one. I had not heard of it before  
3 I came to the department. A merit position  
4 is governed by state personnel rules. An  
5 exempt position mental health creates those  
6 and they create their own standards, their  
7 qualifications, all that stuff. And I  
8 don't think they have to go through  
9 personnel -- state personnel to get it  
10 done.  
11 Q. Do you know that Ms. Owens and Ms. Hubbard  
12 are exempt employees of the Department of  
13 Mental Health?  
14 A. Yes.  
15 Q. Would it be correct to say, David, that you  
16 don't know the context of the comments that  
17 you heard Mr. Dillihay make that you quoted  
18 earlier or the comments?  
19 A. The context?  
20 Q. Yes.  
21 A. Explain what you mean by that, please.  
22 Q. Well, do you know what it related to  
23 specifically?



Page 54

- 1 A. It related -- From my personal knowledge it  
2 related to just that, that there were too  
3 many whites in power positions in the  
4 department and Mr. Dillihay wanted to  
5 change that. That's what I got from it.  
6 Q. That's what you got from it. But do you  
7 know the context, the overall context and  
8 panorama of conversation that it related  
9 to?  
10 A. Well, I don't. But -- I'll leave it at  
11 that. No.  
12 Q. Now, you mentioned earlier, David, that you  
13 had been told by agriculture that you would  
14 be promoted?  
15 A. Yes.  
16 Q. But that because of budgetary constraints  
17 that was not possible?  
18 A. Yeah. After the fact. After I had been  
19 employed there for a few months.  
20 Q. Do you know whether there is a current  
21 potential for proration in state government  
22 for the coming fiscal year?  
23 A. I'm sure there probably is, yeah.

Page 55

- 1 Q. Does every place you work keep a personnel  
2 file on you?  
3 A. Yes.  
4 Q. Have you seen your personnel files at all  
5 at any time?  
6 A. Yes.  
7 Q. Have you seen your personnel file at mental  
8 health?  
9 A. Yeah, I have. Yes.  
10 Q. When was the last time you saw it?  
11 A. I would say probably the last year I worked  
12 there. I couldn't give you an exact date.  
13 Q. Have you heard anything about anything in  
14 your personnel file at mental health  
15 recently?  
16 A. No.  
17 Q. You met with Mr. Mozingo before this  
18 deposition; isn't that correct?  
19 A. I did meet him.  
20 Q. Did you meet with him?  
21 A. No.  
22 Q. Did you discuss this matter with him?  
23 A. No.

Page 56

- 1 Q. Have you discussed this matter with  
2 Ms. Hubbard?  
3 A. No.  
4 Q. Have you discussed this matter with  
5 Ms. Owens?  
6 A. Are you talking about the case specifics?  
7 Tell me exactly what you're talking about.  
8 Q. Yeah. I'm sorry. I'm really talking  
9 about the questions --  
10 A. And when? When are you saying?  
11 Q. At any time.  
12 A. I have not talked about any specifics of  
13 any case with Ms. Hubbard or Ms. Lynn -- or  
14 Ms. Owens. Excuse me. Or Ms. Lynn.  
15 Q. Okay. You haven't talked about any of the  
16 questions that have been asked of you  
17 today?  
18 A. No.  
19 Q. With anyone?  
20 A. No. No.  
21 Q. Do you know why you were subpoenaed to come  
22 here today to testify?  
23 A. I was contacted by Mr. Mozingo I think it

Page 57

- 1 was day before yesterday and he wanted to  
2 know if I could answer some questions. He  
3 called me at my job. And I was very  
4 uncomfortable because I don't want to be  
5 involved in anything ever. And I told him,  
6 I said, I'm sorry, you know, I can't answer  
7 any questions, you know, and I said, unless  
8 I'm forced to. And I left it at that. And  
9 next thing I know I was subpoenaed. I was  
10 contacted by him saying that I was going to  
11 be subpoenaed.  
12 Q. I guess what I'm really asking, though, is  
13 do you know how it came to be that you were  
14 contacted in the first place?  
15 A. No.  
16 Q. Do you know whether anyone thought you  
17 might have information about the case that  
18 would be helpful to one side or the other?  
19 A. I don't see how. No.  
20 Q. While you were at mental health, did  
21 Ms. Lynn encourage you to finish your  
22 education?  
23 A. Yes.

Page 58

1 Q. Get a bachelor's degree?  
 2 A. Yes.  
 3 Q. Did she tell you that she thought it would  
 4 help you in life -- later on in life?  
 5 A. Yes.  
 6 Q. She was interested in your future --  
 7 A. Yes.  
 8 Q. -- enough to suggest that you go back to  
 9 school and finish your degree?  
 10 A. That's correct.  
 11 MR. NIX: Do you mind if I talk to  
 12 June just one second? I'm  
 13 probably through, though.  
 14 MR. MOZINGO: I don't mind. I've  
 15 got a couple more questions.  
 16 Do you want me to go ahead and  
 17 ask them?  
 18 MR. NIX: Sure.  
 19 EXAMINATION  
 20 BY MR. MOZINGO:  
 21 Q. Mr. Petty, would you describe where your  
 22 desk was as a public corridor?  
 23 A. When you walked in the suite through the

Page 59

1 main entrance, I was exactly directly to  
 2 the right maybe 10 feet, 15 feet.  
 3 Q. So anyone coming into the suite would  
 4 automatically come by your desk?  
 5 A. They would come by. That is correct.  
 6 Well, yeah, they would.  
 7 Q. And the doors to the suite where you sat,  
 8 the entranceway to the suite, were they  
 9 kept -- were they unlocked during business  
 10 hours?  
 11 A. Yes.  
 12 Q. So anyone could walk in during business  
 13 hours?  
 14 A. Yes.  
 15 Q. When you heard Mr. Dillihay make the  
 16 statements you testified about earlier, was  
 17 he -- you heard him make those statements  
 18 or similar statements a number of times; is  
 19 that correct?  
 20 MR. NIX: I object to the form of  
 21 that. I object to that. I  
 22 object to the form of that. I  
 23 think he's already said that

Page 60

1 he remembered one conversation  
 2 but he couldn't remember  
 3 exactly what was said in the  
 4 others.  
 5 Q. Did you hear him make statements similar to  
 6 that on more than one occasion?  
 7 A. Yes.  
 8 Q. Was he ever --  
 9 MR. NIX: Let me object to the  
 10 form of that question.  
 11 Q. Was he ever discreet when he would make  
 12 those statements?  
 13 A. At times I would say yes.  
 14 Q. Did he ever at times make those statements  
 15 in a manner like he was indifferent to  
 16 who -- whether anyone was even standing  
 17 around?  
 18 A. I don't -- It's hard to answer that  
 19 question.  
 20 Q. Okay. Do you know the reason Mr. Dillihay  
 21 left the Department of Mental Health?  
 22 A. The only thing that I know is that he got a  
 23 job in Washington, D.C. I don't know what

Page 61

1 his job is. I really don't know. I just  
 2 know he got a new job.  
 3 MR. MOZINGO: Okay. I'm done if  
 4 you want to take --  
 5 MR. NIX: Thank you very much,  
 6 David. Nice to meet you.  
 7 (Brief pause.)  
 8 (Plaintiffs' Exhibit 106 was marked  
 9 for identification.)  
 10 Q. (Continuing by Mr. Mozingo) Mr. Petty, one  
 11 last matter of business we needed to  
 12 clarify. I have marked the drawing that  
 13 you did earlier as Plaintiffs' Exhibit 106;  
 14 is that correct?  
 15 A. That's correct.  
 16 Q. So Plaintiffs' Exhibit 106 is the drawing  
 17 or the diagram that you drew for me today  
 18 during your deposition of the office where  
 19 you worked?  
 20 A. That's right.  
 21 MR. MOZINGO: Thank you very  
 22 much.  
 23

Page 62

1 (Deposition was concluded at  
2 approximately 2:10 p.m.)

3  
4 \*\*\*\*\*

5 FURTHER DEPONENT SAITH NOT

6 \*\*\*\*\*

7  
8 REPORTER'S CERTIFICATE

9 STATE OF ALABAMA:

10 MONTGOMERY COUNTY:

11 I, Lyn Daugherty, Certified Shorthand  
12 Reporter and Commissioner for the State of Alabama  
13 at Large, do hereby certify that I reported the  
14 deposition of:

15 DAVID ROSS PETTY  
16 who was duly sworn by me to speak the truth, the  
17 whole truth and nothing but the truth, in the  
18 matter of:  
19 JOAN FAULK OWENS and KAREN LYNN  
20 HUBBARD,  
21 Plaintiffs,  
22 vs.  
23 STATE OF ALABAMA DEPARTMENT OF MENTAL

Page 63

1 HEALTH AND MENTAL RETARDATION, et  
2 al.,  
3 Defendants.  
4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE MIDDLE DISTRICT OF ALABAMA  
6 NORTHERN DIVISION  
7 Civil Action No. 2:07-cv-650-WHA  
8 on Thursday, July 24th, 2008.

9 The foregoing 62 computer-printed pages  
10 contain a true and correct transcript of the  
11 examination of said witness by counsel for the  
12 parties set out herein. The reading and signing is  
13 hereby waived.

14 I further certify that I am neither of kin  
15 nor of counsel to the parties to said cause nor in  
16 any manner interested in the results thereof.

17 This 24th day of July 2008.

18  
19  
20  
21 Lyn Daugherty, ACCR #66  
22 Expiration Date: 9-30-2008  
23 Certified Court Reporter  
And Commissioner for the  
State of Alabama at Large